

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CAPTAIN NANCY S. DIETZ,

Plaintiff,

V.

**MAYOR JAMES M BAKER,
individually and in his official capacity
as the Mayor of the City of Wilmington,
and MAYOR AND COUNCIL OF
WILMINGTON,**

Defendants.

• • • • •

FILED UNDER SEAL

C.A.No.06-256-SLR

**SEALED VOLUME OF APPENDIX TO PLAINTIFF'S OPENING BRIEF IN SUPPORT
OF HER MOTION FOR FULL AND/OR PARTIAL SUMMARY JUDGMENT
(Part III - A1218 - 1525)**

THE NEUBERGER FIRM, P.A.
THOMAS S. NEUBERGER, ESQ. (#243)
STEPHEN J. NEUBERGER, ESQ. (#4440)
 Two East Seventh Street, Suite 302
 Wilmington, DE 19801
 (302) 655-0582
 TSN@NeubergerLaw.com
 SJN@NeubergerLaw.com

Dated: July 27, 2007

Attorneys for Plaintiff

TABLE OF CONTENTS

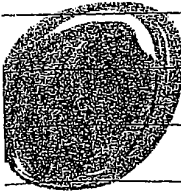
<u>Item</u>	<u>Page</u>
<i>Part I:</i>	
Defendant City of Wilmington’s Response and Answers to Plaintiff’s First Set of Interrogatories Directed to Defendants	A0335
Defendant City of Wilmington’s Supplemental and Amended Responses and Answers to Plaintiff’s First Set of Interrogatories Directed to Defendants	A0374
Defendant James M. Baker’s Answers and Objections to Plaintiff’s First Set of Interrogatories	A0416
Plaintiff’s Answers and Objections to Defendant James Baker’s First Set of Interrogatories	A1443
Defendant’s Document Production	
.....	A0426
.....	A0746
.....	A0793
<i>Part II:</i>	
.....	A0794
.....	A0860
.....	A1208
.....	A1210
.....	A1212
.....	A1217

Part III:

	... A1218
	... A1247
	... A1248
	... A1250
	... A1252
	... A1255
	... A1256
D03391: Chart Illustrating the Progression and Replacements of WPD Inspectors	A1257
Deposition of Chief Michael Szczerba, Jan. 25, 2007	A1258
	... A1323
	... A1333
	... A1343
	... A1354
	... A1363
	... A1372

.....	A1375
.....	A1378
Deposition of Gilbert Howell, Apr. 5, 2007	A1389
Exhibits from the Deposition of Capt. Nancy Dietz, May 9, 2007	
Exhibit 1: Resume of Nancy S. Dietz (D02241-43)	A1416
.....	A1419
.....	A1437
Exhibit 17: Except from Plaintiff's Answers and Objections to Defendant James Baker's First Set of Interrogatories	
	A1440
Exhibit 20: Defendant's Progression Chart of Inspectors	A1441
Deposition of Chief Michael Szczerba in <u>Boyd v. Wilmington Police Department</u> , Jan. 23, 2006	A1474

**SEALED
DOCUMENTS
(A1218 - 1256)**

INSPECTION/CHIEF OF	PROMOTED	LAST DAY WORKED	REPLACED	PAF
Chief of Operations	(W) Eugene Maloney	10/16/73	7/1/83	
Chief of Staff	(W) Charles Bryant	12/15/78	9/28/81	(W) N. Valiente ✓
Chief of Admin	(W) Stanley Friedman	4/3/79	6/30/83	(W) E. MORT, SE ✓
Chief of Operations	(W) Lawrence Curtis	10/14/81	4/29/83	(W) Charles Bryant ✓
COMMUNITY AFFAIRS	(B) John Johnson Sr.	10/14/81	7/31/87	(B) Kenney Miles ✓
INSPECTION OF OPERATIONS	(W) Donald Payne Jr.	5/16/83	9/14/87	(W) Lawrence Curtis ✓
Chief of Administration	(W) Charles Dougherty	7/2/83	6/30/89	(W) Eugene Maloney ✓
INSPECTION OF STAFF SERVICES	(W) John Dougherty	7/29/83	6/6/86	(W) Stanley Friedman ✓
OPERATIONS COMMUNITY SERVICES	(B) Preston Hickman	9/30/87	7/7/89	(B) John Johnson Sr. ✓
INSPECTION OF ADMINISTRATION	(W) Richard Lafashia	2/8/89	5/12/89	(W) John Dougherty ?
UNIFORM OPERATIONS	(B) William Draper	5/8/89	10/28/94	(B) Richard Lafashia
UNIFORM OPERATIONS	(B) Samuel Pratcher	7/3/89	1/7/93	(B) Preston Hickman ✓
ADMINISTRATIVE OPERATIONS	(W) Michael Dixon	2/5/93	9/22/95	(W) Samuel Pratcher
UNIFORM OPERATIONS	(B) John Vignola	11/1/94	3/7/97	(B) William Draper
UNIFORM OPERATIONS	(B) Michael Boykin	11/4/95	3/23/97	(B) Michael Dixon
ADMINISTRATIVE OPERATIONS	(W) Keith Ash	3/7/97	2/20/98	(W) Michael Boykin
UNIFORM OPERATIONS	(B) John Murray	3/23/97	5/26/99	(B) John Vignola
ADMINISTRATIVE OPERATIONS	(B) James Stallings	2/20/98	2/16/01	(B) Keith Ash
ADMINISTRATIVE OPERATIONS	(W) Ronald Huston	5/27/99	7/30/99	(W) John Murray
UNIFORM OPERATIONS	(W) Martin Donohue	7/31/99	—	(W) Ronald Huston
UNIFORM OPERATIONS	(B) James Wright	2/17/01	10/27/05	(B) James Stallings
UNIFORM OPERATIONS	(B) Gilbert Howell	10/28/05	—	(B) James Wright
				
community affairs } chief of operations } staff } services }				
four INSPECTORS }				
now 2				

D03391

Confidential

A1257

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CAPTAIN NANCY S. DIETZ,)

)
Plaintiff,)

) Civil Action
v.) No.06-256
)

MAYOR JAMES M. BAKER, individually)
and in his official capacity as the) PAGES 27 TO 58
Mayor of the City of Wilmington,) AND 149 TO 181
and MAYOR AND COUNCIL OF) ARE CONFIDENTIAL
WILMINGTON,)

)
Defendants.)

Deposition of MICHAEL J. SZCZERBA taken
pursuant to notice at the law offices of The Neuberger
Firm, Two East Seventh Street, Suite 302, Wilmington,
Delaware, beginning at 9:10 a.m. on Thursday,
January 25, 2007, before Kathleen White Palmer,
Registered Merit Reporter and Notary Public.

APPEARANCES:

THOMAS S. NEUBERGER, ESQUIRE
CHERYL A. HERTZOG, ESQUIRE
THE NEUBERGER FIRM
Two East Seventh Street - Suite 302
Wilmington, Delaware 19801-3707
for the Plaintiff

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

www.wilfet.com

Page 2	Page 4
<p>1 APPEARANCES (Continued): 2 3 REBECCA L. BUTCHER, ESQUIRE 4 LANDIS RATH & COBB LLP 5 919 Market Street - Suite 600 6 Wilmington, Delaware 19899 7 for the Defendant Mayor James M. Baker 8 9 TERESA A. CHEEK, ESQUIRE 10 YOUNG, CONAWAY, STARGATT & TAYLOR LLP 11 1000 West Street 12 The Brandywine Building - 17th Floor 13 Wilmington, Delaware 19899-0391 14 for the Mayor and Council of 15 Wilmington 16 17 ALSO PRESENT: 18 CAPTAIN NANCY S. DIETZ 19 ----- 20 MICHAEL J. SZCZERBA, 21 the witness herein, having first been 22 duly sworn on oath, was examined and 23 testified as follows: 24 BY MR. NEUBERGER: 25 Q. Chief, could you state your full name for the 26 record? 27 A. Michael J. Szczerba. The last name is spelled 28 S-z-c-z-e-r-b-a. 29 Q. Your date of birth? 30 A. 10/25/55. 31 Q. Chief, have you had your deposition taken</p>	<p>1 Q. But first of all, did you go to Salesianum 2 school here in Wilmington? 3 A. Yes. 4 Q. When did you graduate? 5 A. In 1973. 6 Q. Did you go to Delaware or anyplace? 7 A. Yes. University of Delaware and graduated in 8 1977. 9 Q. Did you go to the police academy after that? 10 A. Yes. I entered the police academy in July of 11 '78. 12 Q. July of 1978. Okay. 13 When would you have then joined the force 14 after the academy? When would you have started? 15 A. I would have started on the street in November 16 of '78. 17 Q. November of 1978. 18 Is it a good guess that you started on 19 patrol? 20 A. Yes, you're correct. 21 Q. Why don't we just start with how long you were 22 on patrol and take your assignments all the way up to 23 the present, if you can. 24 A. I was in the patrol division approximately</p>
Page 3	Page 5
<p>1 before? 2 A. Yes. 3 Q. On more than one occasion? 4 A. Yes. Some dating back more than others, but I 5 guess as recently in probably 2006 I did have a 6 deposition. 7 Q. Are you on any medications that might interfere 8 with your being able to remember things today? 9 A. No. 10 Q. If you ever need to take a break or anything, 11 if anybody does, just let us know and we'll take a 12 break. 13 A. Thank you. 14 Q. If I ever ask you a question that you don't 15 understand, just ask me to repeat it and I'll be glad 16 to rephrase it or repeat it. I don't want you to 17 guess at anything. 18 Do you understand that? 19 A. Yes. 20 Q. Maybe you could just give me a brief little 21 history of your assignments. Let's say we'll start 22 with the police academy going forward, if that's 23 easier. Okay? 24 A. Okay.</p>	<p>1 until about 1982. And thereabout I was detailed to an 2 assignment with our Drug, Organized Crime and Vice 3 Division better known as the vice squad. That 4 detailed assignment turned into a permanent position. 5 Stayed there until 1989. 6 Q. So about 1982 to 1989 you were in vice? 7 A. Yes. 8 Q. Okay. 9 A. I was promoted to the rank of sergeant. Was 10 then reassigned to the patrol division as a street 11 supervisor. 12 After about a year and a half I was 13 transferred to the detective division as a squad 14 supervisor. 15 Q. So this would be 1990, 1991 detectives? 16 A. Right. 17 Q. A supervisor in detectives. I got you. 18 A. That lasted for a year and a half to two years. 19 I was then transferred to the internal affairs 20 division now known as the Office of Professional 21 Standards. 22 Q. As a sergeant? 23 A. Yes, as a sergeant investigator. 24 Q. Yes.</p>

Michael J. Szczerba

<p style="text-align: right;">Page 6</p> <p>1 A. I remained there for a couple years. Took a 2 brief assignment in our Support Services Division, 3 which was less than a year. 4 Then moved on to our Community Services 5 Division. 6 Q. So about 1996-1997 in the Community Services? 7 A. Approximately, yes. I'm not sure of the years. 8 Q. I'm following you. You said Community 9 Services? 10 A. Yes. 11 Q. Okay. How long would you have been there, 12 maybe? 13 A. Probably '97 through '99. 14 Q. Any promotions yet or are you still sergeant? 15 A. No. Then promoted to the rank of lieutenant 16 in, I think it was, 1999. 17 Q. Okay. 18 A. Went back to the Patrol Division. I was a -- 19 at that time how we had it set up, there were 20 districts, six districts or six police service areas 21 in the City of Wilmington. I was in charge of one of 22 those police service areas. 23 Q. Which district was it? 24 A. Northwest Wilmington.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Oh, okay. I didn't realize that. Okay. 2 A. Yes. When there was a change in the 3 administration, it was offered to the ranks of 4 lieutenant and above to submit resumes for the 5 position of chief of police. I obviously did that and 6 was successful in the process and officially on 7 January 3rd, 2001, I was sworn in as the chief of 8 police. 9 Q. You were selected by then-Major Jim Baker? 10 A. That's correct. Actually, the selection 11 process was officially, you know, when Major Baker was 12 in office, but the selection process occurred as he 13 was the mayor-elect. 14 Q. Got you. 15 A. And then I think it was in -- my appointment 16 was announced in December, but I really wasn't 17 officially sworn in until January. 18 Q. So you served in patrol. You served in the 19 vice unit. You've been a supervisor. We call them a 20 road supervisor in patrol? 21 A. Street. 22 Q. State police called it road. For us it's the 23 street; right? 24 A. Yes. It's the highway patrol versus</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. All right. 2 A. Northern One. 3 And then I was then offered -- after doing 4 that about a year, I was offered a position as the 5 strategic planning lieutenant. That was out of the 6 chief's office. 7 Q. Who was the chief then? 8 A. Michael Boykin. 9 Q. Boykin. 10 A. I also worked in cooperation of the director of 11 public safety, who was David Bostrom. Remained there. 12 All throughout this service, too, I did some dabbling 13 in the public information office. 14 Q. Oh, yes. 15 A. Some people still relate to me as the public 16 information officer. I never held that position 17 permanently, but when I was the strategic planning 18 lieutenant, I did have some mixed duties with -- the 19 public information officer worked out of my office, 20 but, you know, when he was absent, sometimes I would 21 fill in for him. I remained in that position until 22 2001 when I was appointed as chief of police. 23 Q. So you went from lieutenant to chief of police? 24 A. Yes.</p>	<p style="text-align: right;">Page 9</p> <p>1 full-service policing. 2 Q. Supervisor in detectives, sergeant investigator 3 in IA, but never the person in charge of IA? 4 A. That's correct. 5 Q. Never the commander. 6 You worked in support services? 7 A. For a very short time. 8 Q. Short time. Okay. 9 Community services for a couple years? 10 A. Yes. 11 Q. Then you were a street lieutenant in the 12 Northern One district in northwest Wilmington? 13 A. That's right. 14 Q. As the street, as the lieutenant for a 15 district, are you responsible for patrol and traffic 16 and criminal enforcement in that area? 17 A. Mainly patrol functions within that area. I 18 worked in cooperation, of course, with the other 19 lieutenants, but, you know, not as far as any 20 follow-up investigations. Traffic division is a 21 separate division, but of course part of the duties 22 with the Patrol Division is traffic enforcement, but 23 that's not the only duty. 24 Q. So there would be other lieutenants serving in</p>

3 (Pages 6 to 9)

Michael J. Szczerba

Page 10	Page 12
<p>1 the Northern One district or what?</p> <p>2 A. No.</p> <p>3 Q. No?</p> <p>4 A. No. There's lieutenants in charge. You know,</p> <p>5 one person cannot work around the clock, but there was</p> <p>6 a lieutenant in charge of each one of those six police</p> <p>7 service areas.</p> <p>8 Q. Okay. I got you.</p> <p>9 Then let me just see. So you started on</p> <p>10 the force in 1978. Let's see what you can remember of</p> <p>11 who were the chiefs going back. We'll go back from</p> <p>12 you. Okay? So we have you.</p> <p>13 Michael Szczerba start serving as the chief</p> <p>14 from January 3rd from the year 2001; correct?</p> <p>15 A. Correct.</p> <p>16 Q. Prior to you, Mike Boykin was the chief?</p> <p>17 A. Right.</p> <p>18 Q. Wasn't he the chief from around 1997 to 2001?</p> <p>19 A. Approximately.</p> <p>20 Q. Does that sound about fair?</p> <p>21 A. Yes, yes, it does.</p> <p>22 Q. Prior to him it was Sam Pratcher?</p> <p>23 A. Yes.</p> <p>24 Q. Does it sound about fair he was the chief from</p>	<p>1 A. Yes, that's fair.</p> <p>2 Q. Then taking to when you started, was Harry</p> <p>3 Manelski the chief when you started at the police</p> <p>4 academy?</p> <p>5 A. Yes, he was.</p> <p>6 Q. He would have served from at least the time you</p> <p>7 were in the police academy through 1981 when Regan</p> <p>8 took over?</p> <p>9 A. Yes.</p> <p>10 Q. All right. Thank you.</p> <p>11 A. I know he was on his way out in November of</p> <p>12 1980, so I guess it was probably a transition there.</p> <p>13 But I don't know what his official date was because it</p> <p>14 was a memorable date for me because I was shot and</p> <p>15 wounded in the line of duty and I knew that Harry was</p> <p>16 still the chief, but on his way out then.</p> <p>17 Q. So I remember having a meeting in your hospital</p> <p>18 room when everybody came over.</p> <p>19 A. Yes, yes. Vaguely.</p> <p>20 MR. NEUBERGER: I would like to mark a</p> <p>21 document. Why don't we mark this organizational</p> <p>22 chart.</p> <p>23 (Szczerba Exhibit 1 was marked for</p> <p>24 identification.)</p>
Page 11	Page 13
<p>1 1993 to 1997?</p> <p>2 A. Yes.</p> <p>3 Q. Before Chief Pratcher, Guy Sapp was the chief.</p> <p>4 Is that true?</p> <p>5 A. That's true.</p> <p>6 Q. Does it sound about fair that he served from</p> <p>7 1988 to 1993?</p> <p>8 A. Yes.</p> <p>9 Q. Before Guy Sapp was a chief by the name of</p> <p>10 Donald Payne who I just don't remember. Was he a</p> <p>11 chief for about two years from 1987 to 1999?</p> <p>12 A. That's correct.</p> <p>13 Q. Then there was Joe Pennell before Don Payne.</p> <p>14 Is that true?</p> <p>15 A. Yes.</p> <p>16 Q. Did Joe Pennell serve as chief from around 1985</p> <p>17 to around 1988?</p> <p>18 A. Yes.</p> <p>19 Q. We are still at your time on the force. Okay.</p> <p>20 So before Joe Pennell was Dennis Regan the</p> <p>21 chief?</p> <p>22 A. Yes.</p> <p>23 Q. Does it sound like he served from around 1981</p> <p>24 to 1985?</p>	<p>1 BY MR. NEUBERGER:</p> <p>2 Q. Chief, I've put in front of you an</p> <p>3 organizational chart that my client, Captain Nancy</p> <p>4 Dietz, gave me that's listed, identified WPD</p> <p>5 Organization Chart 2005, and at the bottom it has a</p> <p>6 Bates number that we put on it, P90. Okay.</p> <p>7 Have you seen this kind of an</p> <p>8 organizational chart before?</p> <p>9 A. Yes.</p> <p>10 Q. For the year 2005, does this chart appear to</p> <p>11 accurately depict the organizational structure of the</p> <p>12 WPD at that time?</p> <p>13 A. Yes.</p> <p>14 Q. Has it changed significantly up till today?</p> <p>15 A. No.</p> <p>16 Q. Today is it basically the same organizational</p> <p>17 chart?</p> <p>18 A. Yes.</p> <p>19 Q. How many uniformed officers are in your force?</p> <p>20 I probably need to get an understanding of that. How</p> <p>21 many do you have and how many are authorized? Why</p> <p>22 don't you explain it that way?</p> <p>23 A. Authorized presently for 322. That includes</p> <p>24 the academy class that we presently have in session.</p>

4 (Pages 10 to 13)

Michael J. Szczerba

Page 14	Page 16
<p>1 It's due for graduation on March 9th.</p> <p>2 I believe now we are probably into the --</p> <p>3 the number almost changes monthly or sometimes weekly.</p> <p>4 I believe we are in the area of probably the high 280s</p> <p>5 right now as far as actual strength on the street.</p> <p>6 And then it's deducted from there when you</p> <p>7 get into the next number will be our working strength,</p> <p>8 and our working strength is taking into consideration</p> <p>9 our true number with people that are on long-term</p> <p>10 injury issues, military service, administrative</p> <p>11 duties, regardless of investigations and so on. So</p> <p>12 the number gets whittled down. And that number</p> <p>13 generally runs maybe around, any given week, maybe</p> <p>14 around 12 officers.</p> <p>15 So we cannot go on the authorized strength.</p> <p>16 You cannot really go on the actual strength. The</p> <p>17 number we look at is the actual working strength.</p> <p>18 Q. At the end of 2005, were the numbers, actual</p> <p>19 strength similar, around the high 280s, or less?</p> <p>20 A. Probably less because our authorized strength</p> <p>21 was less than -- since I came in as chief, when I came</p> <p>22 in as chief, our authorized strength then was 289</p> <p>23 authorized. We since increased in incremental steps</p> <p>24 until the present 322.</p>	<p>1 have been during your career. Okay?</p> <p>2 A. Okay.</p> <p>3 Q. I don't want you to guess. The ones you</p> <p>4 remember, you remember.</p> <p>5 MR. NEUBERGER: Let's just mark this as</p> <p>6 Szczerba Number 2.</p> <p>7 (Szczerba Exhibit 2 was marked for</p> <p>8 identification.)</p> <p>9 BY MR. NEUBERGER:</p> <p>10 Q. So I've prepared this chart with my client's</p> <p>11 assistance. For now let's look at the investigative</p> <p>12 operations inspector. Do you see that on the</p> <p>13 left-hand side of the chart?</p> <p>14 A. Yes.</p> <p>15 Q. Then on the right-hand side I've listed the</p> <p>16 other inspector position that's called uniformed</p> <p>17 operations inspector; right?</p> <p>18 A. Yes.</p> <p>19 Q. Those are the two that are found on Exhibit</p> <p>20 Number 1, the organizational chart we just looked at;</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. Now, let's do the easy one first.</p> <p>24 Martin Donohue is the present investigative</p>
Page 15	Page 17
<p>1 Q. In November of 2005, what is your best</p> <p>2 recollection of the authorized strength of the force?</p> <p>3 A. Probably about 307, maybe around there.</p> <p>4 Q. What was your estimate of the number you could</p> <p>5 actually put on the street at that time?</p> <p>6 A. In the 270s.</p> <p>7 Q. 270s. Got you. Thank you.</p> <p>8 Now, going back to this Exhibit Number 1,</p> <p>9 there are two inspectors shown on the organizational</p> <p>10 chart reporting to you; is that correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Then the bottom two-thirds of the chart</p> <p>13 identified the people who report through those</p> <p>14 inspectors; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Does this chart accurately depict the various</p> <p>17 divisions or units who reported to the inspectors at</p> <p>18 that time?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Thank you.</p> <p>21 Now, with the help of my client, I prepared</p> <p>22 a chart that we are going to look at and go through</p> <p>23 your memory just like who the chiefs were. I'm going</p> <p>24 to try to go through who the various inspectors might</p>	<p>1 operations inspector; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. He's been serving since around 1999; is that</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Now, he's a white male; isn't that right?</p> <p>7 A. Yes.</p> <p>8 Q. Now, his predecessor was Inspector Ronald</p> <p>9 Huston. Do you remember that?</p> <p>10 A. Yes.</p> <p>11 Q. Right?</p> <p>12 A. Yeah.</p> <p>13 Q. Ronald Huston was the investigative operations</p> <p>14 inspector; is that correct?</p> <p>15 A. Yes. Not for long. I wouldn't be able to</p> <p>16 relate as to what side of the house he was on, meaning</p> <p>17 the uniform services versus the investigative side.</p> <p>18 Q. He only served for a couple months?</p> <p>19 A. Right.</p> <p>20 Q. Was he a white male?</p> <p>21 A. Yes.</p> <p>22 Q. Now, before Ronald Huston, John Murray was an</p> <p>23 inspector; right?</p> <p>24 A. Yes.</p>

5 (Pages 14 to 17)

Michael J. Szczerba

<p style="text-align: right;">Page 18</p> <p>1 Q. He served from 1997 to 1999. Does that sound 2 about right? 3 A. Yes. 4 Q. He was a white male; is that right? 5 A. Yes. 6 Q. Then there was a John Vignola. Was he an 7 inspector before Murray? 8 A. I believe so. 9 Q. Did he serve from around 1994 to 1997? 10 A. Yes. 11 Q. Was he a white male? 12 A. Yes. 13 Q. Then there's Bill Draper. Okay. Was there a 14 William Draper who was an inspector? 15 A. Yes. 16 Q. Was he a white male? 17 A. Yes. 18 Q. Did he serve from around 1989 to 1994? 19 A. Yes. 20 Q. Then was there a Richard LaFashia who was an 21 inspector? 22 A. Yes. 23 Q. Did he serve for a short period of time in 24 1989?</p>	<p style="text-align: right;">Page 20</p> <p>1 right? 2 A. Yes. 3 Q. Charles Dougherty was an inspector who served 4 before Donald Payne? 5 A. Yes. 6 Q. And John Doherty was an inspector who served 7 before Charles? 8 A. Right. 9 Q. All right. And that Payne, Dougherty, and 10 Doherty were white males, also? 11 A. Yes. 12 MS. CHEEK: I'm going to object to the 13 extent that what your questions are addressing aren't 14 consistent with the information on your chart because 15 you have Charles Dougherty and John Doherty serving 16 for at least the same period of time. 17 MR. NEUBERGER: There might be a typo on 18 there. 19 MS. CHEEK: And also Donald Payne, ditto. 20 MR. NEUBERGER: If there's a typo, we'll 21 check that. 22 BY MR. NEUBERGER: 23 Q. Wasn't there a time when there was more than 24 two inspectors?</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Yes. 2 Q. He was a white male? 3 A. Yes. 4 Q. Before he was chief, was Guy Sapp the next 5 inspector? 6 A. I believe so. 7 Q. He was a white male; is that correct? 8 A. Yes. 9 Q. Did he serve from sometime in 1987 and in 1988? 10 A. I believe so. I will be able to state this, 11 that I can identify all these people being inspectors 12 as to their race. But as far as the years of service, 13 I'm not really sure. 14 Q. That's why I'm not asking you specific dates. 15 My client is the director of human resources, the 16 captain responsible for the human resources function 17 for the Wilmington Police right now, isn't she? 18 A. Yes. 19 Q. My client has served on the force approximately 20 the same period of time you have, hasn't she? 21 A. Yes. A couple years less. I believe she 22 probably came in around 1980. 23 Q. I think what you are telling me is that Donald 24 Payne was an inspector who served before Guy Sapp;</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Yes. And also I think with the objection, too, 2 the question there may have been some -- there could 3 have been some changes as far as being investigative 4 inspector and on to the uniform side, so I'm not sure 5 about that, if any of these inspectors have ever 6 changed as far as their assignments. 7 And, yes, the number has changed. I 8 believe when I came on, there may have been four 9 inspectors and then down to three and now we presently 10 have two. 11 Q. Right. Under Chief Manelski, if we go back. 12 Does it sound like there may have been four 13 inspectors? 14 A. Yes, yes, possibly. And they may have been in 15 the transition from when they came on the police 16 department moving from four inspectors down to three 17 inspectors. 18 Q. Let's go down to the right-hand side of this 19 document where I have Uniform Operations inspectors 20 listed. Do you see that? 21 A. Yes. 22 Q. Gilbert Howell is the incumbent Uniform 23 Operations inspector; right? 24 A. Yes.</p>

6 (Pages 18 to 21)

Michael J. Szczerba

Page 22	Page 24
<p>1 Q. He is a black male; right?</p> <p>2 A. Yes.</p> <p>3 Q. He served from late 2005 through the present;</p> <p>4 right?</p> <p>5 A. Right.</p> <p>6 Q. Then his predecessor was James Wright; is that</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. His predecessor was James Stallings?</p> <p>10 A. Yes.</p> <p>11 Q. And the predecessor before Stallings was Keith</p> <p>12 Ash?</p> <p>13 A. Yes.</p> <p>14 Q. Before that it was Michael Boykin?</p> <p>15 A. Yes.</p> <p>16 Q. Those four people are all black males; is that</p> <p>17 right?</p> <p>18 A. That's correct.</p> <p>19 Q. Before Michael Boykin is it true that Michael</p> <p>20 Dixon was the uniformed operations inspector?</p> <p>21 A. That's correct.</p> <p>22 Q. And he was a black male; correct?</p> <p>23 A. Yes.</p> <p>24 Q. Before Michael Dixon, Samuel Pratcher was the</p>	<p>1 positions; is that correct?</p> <p>2 A. That's correct.</p> <p>3 MR. NEUBERGER: I think we are going to</p> <p>4 mark two performance appraisals as exhibits. One is</p> <p>5 the performance appraisal for Captain Nancy Dietz</p> <p>6 which starts at page D-2950 in the Bates stamped</p> <p>7 record. So we'll mark this as Szczerba 3 if we could.</p> <p>8 (Szczerba Exhibit 3 was marked for</p> <p>9 identification.)</p> <p>10 MR. NEUBERGER: Then we'll mark as</p> <p>11 Szczerba 4 a performance appraisal of Gilbert Howell</p> <p>12 of the same period of time which is marked as starting</p> <p>13 at D-3084 in the Bates stamped records produced by the</p> <p>14 defendants.</p> <p>15 (Szczerba Exhibit 4 was marked for</p> <p>16 identification.)</p> <p>17 MR. NEUBERGER: Before I start any</p> <p>18 questioning, Counsel, I would like to make sure we are</p> <p>19 all on the same page as far as confidentiality.</p> <p>20 We are going to be asking some questions</p> <p>21 about documents that have been stamped "Confidential"</p> <p>22 by the defendants, so I'd ask the court reporter to</p> <p>23 mark this questioning starting here as confidential</p> <p>24 and to separately seal it. Then when we come out of</p>
Page 23	Page 25
<p>1 Uniform Operations inspector; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And he was a black male?</p> <p>4 A. Yes.</p> <p>5 Q. Before Inspector Pratcher, Preston Hickman was</p> <p>6 the uniformed operations inspector?</p> <p>7 A. Yes.</p> <p>8 Q. He was a black male?</p> <p>9 A. Yes.</p> <p>10 Q. Before him John Johnson served in that</p> <p>11 position; is that correct?</p> <p>12 A. I remember he was an inspector, yes.</p> <p>13 Q. And he was a black male?</p> <p>14 A. Yes.</p> <p>15 Q. Before him there at least was an inspector by</p> <p>16 the name of Kenneth Miles; is that right?</p> <p>17 A. That's correct.</p> <p>18 Q. And he was a black male; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. That's all I have on that, I think, Chief. Let</p> <p>21 me just see.</p> <p>22 Now, in all those positions we just</p> <p>23 identified on Szczerba Number 2, there's never been a</p> <p>24 woman who has held either of those two inspector</p>	<p>1 confidential documents, we'll then tell the court</p> <p>2 reporter again and then that can go into the unsealed</p> <p>3 part of the record. That, I think, is what our</p> <p>4 confidentiality order will require.</p> <p>5 Do you agree?</p> <p>6 MS. CHEEK: That sounds right.</p> <p>7 MS. BUTCHER: That's fine.</p> <p>8 MR. NEUBERGER: So that sounds like a good</p> <p>9 procedure to follow?</p> <p>10 MS. CHEEK: Yes.</p> <p>11 MR. NEUBERGER: Then that would mean that</p> <p>12 the exhibits, also, are protected by the</p> <p>13 confidentiality order, and if we use them in briefing</p> <p>14 or whatever, they'll be in a sealed appendix or</p> <p>15 whatever.</p> <p>16 Is that what everybody understands?</p> <p>17 MS. CHEEK: Yes. That's all right.</p> <p>18 -----</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

7 (Pages 22 to 25)

Michael J. Szczerba

Page 26	Page 28
<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9 PAGES 27 TO 58 OF THIS TRANSCRIPT</div> <div>10</div> <div>11 HAVE BEEN DEEMED TO BE CONFIDENTIAL</div> <div>12</div> <div>13 BY THE PARTIES AND CAN BE FOUND IN A</div> <div>14</div> <div>15 SEALED ENVELOPE AT END OF THIS</div> <div>16</div> <div>17 TRANSCRIPT.</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>	<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>
Page 27	Page 29
<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>	<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div>

8 (Pages 26 to 29)

**SEALED
DOCUMENTS
(A1266 - 1272)**

Michael J. Szczerba - CONFIDENTIAL

Page 58	Page 60
<p>1 2 3 4 5 6 7 8 9 10 11 12 MR. NEUBERGER: Why don't we come out of 13 the sealed portion here. We are coming out of 14 documents that are confidential. This makes it easier 15 for us. 16 ----- 17 18 19 20 21 22 23 24</p>	<p>1 alone. Sometimes it's referred to as Office of Public 2 Safety. 3 Q. Okay. 4 A. That leads to some confusion to me as a city 5 employee and as a city resident because I consider, 6 you know -- 7 Q. Yes, I see what you mean. 8 A. Police and fire, a department. 9 Q. Right, right. 10 A. I don't know if you get into the city charter 11 or the city code to see if it's actually listed as the 12 Department of Public Safety or is it the Office of 13 Public Safety. 14 Q. Okay. 15 A. I say that in that position the director of 16 public safety has been intermittent even throughout my 17 police service meaning sometimes we have one, 18 sometimes we don't. 19 Q. For now let's just think of it as the Office of 20 Public Safety. 21 A. Okay. 22 Q. My question is: There is a Department of 23 Police. That's an official title; right? 24 A. Yes.</p>
Page 59	Page 61
<p>1 MR. NEUBERGER: Let's mark this as the next 2 number. This will be Szczerba 8, a document marked 3 P087, one page. 4 (Szczerba Exhibit 8 was marked for 5 identification.) 6 BY MR. NEUBERGER: 7 Q. Chief Szczerba, I've put this document, 8 Szczerba 8, in front of you. Is this an accurate 9 organizational chart of the City of Wilmington for the 10 year 2005? 11 A. Yes. 12 Q. So this shows that the mayor has a chief of 13 staff by the name of William S. Montgomery; right? 14 A. Yes. 15 Q. He was the chief of staff when Gilbert Howell 16 was selected to be inspector; right? 17 A. Yes. 18 Q. Then it shows that about 11 city departments 19 report directly to the mayor through the chief of 20 staff; is that right? 21 A. Yes. 22 Q. There's a Department of Public Safety for the 23 City of Wilmington; right? 24 A. I could not say, you know, under that title</p>	<p>1 Q. You're the chief of police? 2 A. Yes. 3 Q. The next report for you is to the director, 4 James N. Mosley of this office or whatever of public 5 safety; correct? 6 A. Yes. 7 Q. Then Mosley reports to the mayor? 8 A. Mosley reports to the chief of staff. 9 Q. Mosley reports to the chief of staff. 10 Then the chief of staff reports to the 11 mayor; right? 12 A. Yes. 13 Q. The chief of staff is one level under the 14 mayor; right? 15 A. Yes. 16 Q. Mosley is the second layer employee the mayor? 17 A. Yes. 18 Q. You are the third level below the mayor; right? 19 A. According to this chart, yes. 20 Q. Then your two current inspectors are 21 fourth-level employees the mayor; is that correct? 22 A. Yes. 23 Q. Your two inspectors as shown by the chart we 24 looked at earlier report to you; correct?</p>

16 (Pages 58 to 61)

Michael J. Szczerba

Page 62	Page 64
<p>1 A. Correct.</p> <p>2 Q. They do not report directly to chief of staff</p> <p>3 William S. Montgomery?</p> <p>4 A. No.</p> <p>5 Q. They do not report directly to Mayor James M.</p> <p>6 Baker?</p> <p>7 A. Correct.</p> <p>8 Q. They report through a chain of command; is that</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 MR. NEUBERGER: Then let's mark this next</p> <p>12 document as Exhibit 9.</p> <p>13 (Szczerba Exhibit 9 was marked for</p> <p>14 identification.)</p> <p>15 BY MR. NEUBERGER:</p> <p>16 Q. I have put in front of you a document which</p> <p>17 came from plaintiff's document production starting at</p> <p>18 page 104 identified as City of Wilmington and FOP</p> <p>19 Lodge #1, Captains and Inspectors Bargaining</p> <p>20 Agreement, July 1, 2001, to June 30th, 2007. Do you</p> <p>21 see that?</p> <p>22 A. Yes.</p> <p>23 Q. There is such a collective bargaining agreement</p> <p>24 that the captains and inspectors have signed with the</p>	<p>1 Q. Okay.</p> <p>2 A. And then the signature below that, the</p> <p>3 squiggles there, sorry about that term, I believe</p> <p>4 that's Captain Sean Finerty. Below that is Captain</p> <p>5 Michael Maggitti. And below that I believe is the</p> <p>6 signature Sergeant Robert Donovan, who was then, I</p> <p>7 guess, the FOP president.</p> <p>8 Q. Okay. Okay.</p> <p>9 This contract was in place in 2004 when</p> <p>10 Gilbert Howell was selected to be inspector; right?</p> <p>11 A. Yes.</p> <p>12 Q. This contract was in place earlier when James</p> <p>13 Wright was selected to be inspector; is that correct</p> <p>14 says 2001?</p> <p>15 A. Right. I believe at that point, yeah, it was a</p> <p>16 long-term expired contract, so the contract was</p> <p>17 long-term expired, so this is retro back to that one</p> <p>18 date.</p> <p>19 Q. When was the promotion of Inspector Wright?</p> <p>20 When was the selection of Inspector Wright, Captain</p> <p>21 Wright, to be inspector?</p> <p>22 A. I believe in March of '01.</p> <p>23 Q. March of 2001?</p> <p>24 A. Yes.</p>
Page 63	Page 65
<p>1 City of Wilmington; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. Does this appear to be that document?</p> <p>4 A. Yes.</p> <p>5 Q. If you look at the last page, P126, we see</p> <p>6 Mayor Baker's signature to this document; is that</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. The city clerk's signature; right?</p> <p>10 A. Yes.</p> <p>11 Q. On the other side Captain Nancy Dietz's</p> <p>12 signature; right?</p> <p>13 A. Yes, correct.</p> <p>14 Q. Then Inspector James Wright's signature; right?</p> <p>15 A. Yes.</p> <p>16 Q. Current Inspector Martin Donohue's signature;</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Then Captain Gilbert Howell?</p> <p>20 A. Yes.</p> <p>21 Q. Can you read the other ones?</p> <p>22 A. Victor Ayala.</p> <p>23 Q. Captain?</p> <p>24 A. Yes.</p>	<p>1 Q. This collective bargaining agreement went into</p> <p>2 effect July of 2001?</p> <p>3 A. Yes.</p> <p>4 Q. Was there an expired agreement before that --</p> <p>5 Is that what you are telling me? -- for the inspectors</p> <p>6 and the captains?</p> <p>7 A. Okay. It would have been a present contract in</p> <p>8 effect then because then that contract -- when Wright</p> <p>9 was appointed to inspector, that contract would have</p> <p>10 expired in June 30th of '01.</p> <p>11 Q. Okay. What I'm saying is: Did the inspectors</p> <p>12 and the captains have a contract with the city before</p> <p>13 this one here that's marked as Szczerba 9?</p> <p>14 A. Yes, they would have, yes.</p> <p>15 Q. They were in a collective bargaining unit, the</p> <p>16 captains and inspectors, before this contract marked</p> <p>17 Szczerba 9 came into existence?</p> <p>18 A. Yes.</p> <p>19 Q. Right?</p> <p>20 A. Yes.</p> <p>21 Q. So for some time now captains and inspectors</p> <p>22 have been in a collective bargaining unit --</p> <p>23 A. That is correct.</p> <p>24 Q. -- together. Okay.</p>

17 (Pages 62 to 65)

Michael J. Szczerba

Page 66	Page 68
<p>1 Now, you, as the chief, aren't in any</p> <p>2 collective bargaining unit; right?</p> <p>3 A. That's correct.</p> <p>4 Q. You, as the chief, are not represented by the</p> <p>5 union?</p> <p>6 A. That's right.</p> <p>7 Q. You're management?</p> <p>8 A. Yes.</p> <p>9 Q. So you don't have any contract rights to fall</p> <p>10 back on should you have a dispute with the city?</p> <p>11 A. No, I don't. I don't even have anything under</p> <p>12 state law to fall back on. The chief of police</p> <p>13 position for the City of Wilmington is quite unique in</p> <p>14 that because of the police officer's bill of rights,</p> <p>15 police chiefs of all municipalities and</p> <p>16 superintendents of all police are entitled to due</p> <p>17 process, and then the clause comes in with the</p> <p>18 exception of municipalities greater than 60,000. So</p> <p>19 there's one. So I stand alone as the chief of police.</p> <p>20 Q. You're telling me that one paragraph provision</p> <p>21 in state law when one reads it clearly, carefully --</p> <p>22 A. Yes.</p> <p>23 Q. -- for all those chiefs who get hearings for</p> <p>24 discharge --</p>	<p>1 A. Correct.</p> <p>2 Q. Their working conditions are described, they</p> <p>3 have certain rights of working conditions in here;</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. They have certain rights for discipline?</p> <p>7 A. Yes.</p> <p>8 Q. So, for example, if we found Article 10, which</p> <p>9 is on page 118 at the bottom, do you see Section 10.2,</p> <p>10 "Disciplinary Suspensions"?</p> <p>11 A. Yes.</p> <p>12 Q. And various things following that. Okay?</p> <p>13 A. Right.</p> <p>14 Q. These give the inspectors certain rights should</p> <p>15 they have a dispute with the city?</p> <p>16 A. Yes.</p> <p>17 Q. But you, as the chief, don't have those kinds</p> <p>18 of rights?</p> <p>19 A. No.</p> <p>20 Q. The director of public safety, Mr. Mosley, he</p> <p>21 doesn't have a collective bargaining agreement with</p> <p>22 the city, either, does he?</p> <p>23 A. No.</p> <p>24 Q. He's either an office head or a department</p>
Page 67	Page 69
<p>1 A. Correct.</p> <p>2 Q. -- including the colonels in of the state</p> <p>3 police --</p> <p>4 A. Yes.</p> <p>5 Q. -- you're not covered by that?</p> <p>6 A. That is correct. I have to get that changed.</p> <p>7 So essentially, I wear the wrong color socks to work</p> <p>8 and I could be dismissed.</p> <p>9 MR. NEUBERGER: Off the record.</p> <p>10 (Discussion off the record.)</p> <p>11 BY MR. NEUBERGER:</p> <p>12 Q. You told me that by state law as the chief of</p> <p>13 Wilmington you have no contract rights; right?</p> <p>14 A. Correct.</p> <p>15 Q. You told me that you, as the chief, do not have</p> <p>16 any collective bargaining rights with the City of</p> <p>17 Wilmington like are found in Szczerba Number 9?</p> <p>18 A. Right.</p> <p>19 Q. Now, the inspectors of the City of Wilmington,</p> <p>20 if one looks at this contract, have various written</p> <p>21 rights; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. So, for example, they have grievance procedures</p> <p>24 should they have a grievance?</p>	<p>1 head?</p> <p>2 A. That's correct.</p> <p>3 Q. He doesn't have any rights similar to those</p> <p>4 found in this Exhibit Number 9, Szczerba 9?</p> <p>5 A. Correct.</p> <p>6 MR. NEUBERGER: I pulled together some</p> <p>7 other documents that we produced for the city found in</p> <p>8 The White Book, some directives about the inspectors,</p> <p>9 maybe even the chief. I want to mark those now.</p> <p>10 So let's mark this as Szczerba Number 10.</p> <p>11 (Szczerba Exhibit 10 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. NEUBERGER:</p> <p>14 Q. I put in front of you documents marked P-11</p> <p>15 through, apparently, 21. I don't expect I'm going to</p> <p>16 ask you any questions on P13 and 14. They appear to</p> <p>17 have been inadvertently included in this document.</p> <p>18 The bottom of this first page here, P11, it</p> <p>19 says in the left-hand corner "Directive 3.0." Okay?</p> <p>20 Is this something that's found in that White Book we</p> <p>21 talked about earlier?</p> <p>22 A. Yes.</p> <p>23 Q. So The White Book, what's the formal title for</p> <p>24 that again?</p>

Michael J. Szczerba

Page 70	Page 72
<p>1 A. Police officers -- Wilmington Police Officer's 2 Manual. 3 Q. Manual. Okay. Picture of the city on the 4 front? 5 A. White binder. 6 Q. Okay. Directive 3.0 here, is this a 7 description of responsibilities of the director of 8 uniformed operations? 9 A. Yes. 10 Q. So the director of uniformed operations is 11 responsible for the Patrol Division, the Traffic 12 Division, Support Services, and Community Services 13 divisions; is that correct? 14 A. Yes. And there's been a change since then, so 15 this is outdated. 16 Q. What would be added to that? 17 MS. CHEEK: Objection to form. 18 Q. What's the change been? 19 A. The Patrol Division would be the Uniformed 20 Services Division. 21 Q. They renamed it? 22 A. Yes. 23 Q. What else? 24 A. The Traffic Division is not a division. It's a</p>	<p>1 did this document describe accurately the 2 responsibilities at that time? 3 A. No. That's when the divisions would have been 4 changed. 5 Q. So they had already been changed? 6 A. Right. 7 Q. Got you. Okay. 8 Is there a new 3.0 somewhere? 9 A. I do not know if it's been corrected. We've 10 been going through this for, you know, accreditation 11 purposes and through redeployments and changes in the 12 police department. So sometimes you have to, you 13 know, catch up to where, if you change one directive, 14 it may affect another directive as far as the titles 15 of divisions. So some may still present day be 16 outdated, some have been changed. I don't know if 17 this has been amended. 18 Q. Okay. 19 A. As of yet. 20 Q. But the point is that the inspector of Uniform 21 Operations has certain units or divisions that work 22 under him? 23 A. Yes. 24 Q. Under A here where we looked at whatever the</p>
Page 71	Page 73
<p>1 unit. It's part of the Special Operations Division. 2 Q. So traffic should be the traffic unit. Okay. 3 Is there a Support Services Division? 4 A. Yes, there is. 5 Q. Is there still a Community Services Division? 6 A. No, there is not. 7 Q. Did that get subsumed in something else? 8 A. Yes. It would essentially be included under 9 the Special Operations Division. So the Special 10 Operations Division has a traffic unit, has a 11 community policing unit, but it's not a division in 12 itself. 13 So essentially under that position of 14 inspector you have presently the Uniform Services 15 Division, the Special Operations Division, and Support 16 Services stands as is. 17 Q. Okay. 18 A. And you have the Communications Division. 19 Q. In 2001 when James Wright was promoted to the 20 inspector of Uniform Operations, did this document 21 correctly describe the responsibilities at that time? 22 A. Yes. 23 Q. In November or so of 2005 when Gilbert Howell 24 was promoted to the inspector of uniform operations,</p>	<p>1 list might be, is it true that when this document was 2 prepared and when Inspector Wright was selected, he 3 was responsible for the overall efficient operation of 4 various divisions or units? 5 A. Yes. 6 Q. Even today when Gilbert Howell was selected, he 7 was responsible for the efficient operation of various 8 divisions and units? 9 A. Yes. 10 Q. Paragraphs B and C here, have they changed in 11 any way or are they still in effect? 12 A. Still in effect. 13 Q. So under B it says that the inspector of 14 uniformed operations meets regularly with the 15 commanders of divisions for, among other things, the 16 purpose of formulating plans consistent with the 17 objectives of the department? 18 A. That's correct. 19 Q. Is that one of his duties? 20 A. Yes. 21 Q. Now, if we go to the next page, we have 22 Directive 2.0, Inspector of Investigative Operations. 23 A. Yes. 24 Q. Is that position still responsible for the</p>

Michael J. Szczerba

Page 74	Page 76
<p>1 overall efficient operation of various divisions or 2 units? 3 A. Yes. 4 Q. The six listed here, are they still in effect? 5 A. Some of the titles have changed, but in 6 essence, it's still the same responsibilities. 7 Q. What might have been a title change, if you 8 could identify that for me? 9 A. Internal Affairs Division is now the Office of 10 Professional Standards. 11 Q. Okay. 12 A. The Personnel and Planning Division is now the 13 Human Resources Division. 14 Q. Okay. 15 A. And, of course, the number six there, the 16 Administrative Personnel, that would be included under 17 the Human Resource Division. 18 Q. So the titles might have changed, but the 19 functions are still the same and they still report to 20 the same person? 21 A. Correct. 22 Q. Then B, C, D, E, and F, are they still 23 accurate? 24 A. Yes.</p>	<p>1 A. That's right. 2 Q. Now, under "Responsibility," that first 3 paragraph, it says that you, as the chief executive 4 officer, are responsible for, among other functions, 5 planning for the department; is that correct? 6 A. Yes. 7 Q. It doesn't list you as formulating department 8 or division policies. That seems to be found under 9 captains. Do you see that? 10 If you flip to the second page under the 11 captain's responsibilities, second line there, it 12 mentions about them formulating and implementing 13 departmental or division policies. Do you see that? 14 A. Yes. 15 Q. You, as the chief at the top of the chain of 16 command, have authority for whatever might be coming 17 up the chain of command from your captains in the area 18 of policy; right? 19 A. Yes. 20 Q. But policy for the Wilmington Police 21 Department, it has to be officially approved by 22 something called the administrative board of the City 23 of Wilmington? 24 A. That's correct.</p>
Page 75	Page 77
<p>1 Q. Then let's skip over the next two pages. Let's 2 go to page P15. We have a Directive 1.2. Okay? 3 A. Yes. 4 Q. The first thing in 1.2 is the section on chief 5 of police, then inspector, then captains. Do you see 6 that? 7 A. Yes. 8 Q. The description of the authority and the 9 responsibilities of a chief of police, is that 10 accurate as of today? 11 A. Yes. 12 Q. Was it accurate as of the end of 2005 when 13 Gilbert Howell was selected? 14 A. Yes. 15 Q. In 2001 when James Wright was selected, did 16 this still describe the authority and responsibility 17 of the chief of police? 18 A. Yes. 19 Q. So under your responsibilities, it says you 20 have final authority on all matters pertaining to the 21 department; is that correct? 22 A. That's correct. 23 Q. You're, in the paramilitary organization, 24 you're the top of the chain of command; is that right?</p>	<p>1 Q. Your White Book, the police officer's manual, 2 is full of policies and things like that, but at some 3 stage in history those policies had to be approved by 4 the administrative board of the City of Wilmington; is 5 that correct? 6 A. Yes. 7 Q. The police department on its own can't go out 8 and adopt policies? 9 A. Correct. 10 Q. And the administrative board has various 11 members. You're aware of that? 12 A. Yes. 13 Q. The mayor is on the administrative board; 14 right? 15 A. Yes. 16 Q. Director of personnel for the City of 17 Wilmington is on the board? 18 A. Yes. 19 Q. Do you remember anybody else? 20 A. Possibly the finance director. There's members 21 of council because I know the council president. 22 Q. Might be the council president, right. And 23 there may be others; right? 24 A. Yes, yes.</p>

Michael J. Szczerba

Page 78	Page 80
<p>1 Q. Okay.</p> <p>2 A. You mentioned the mayor. I'm unsure of that</p> <p>3 because usually the representative of the mayor is the</p> <p>4 chief of staff. It possibly could be the chief of</p> <p>5 staff.</p> <p>6 Q. I'm sure there's a statute or something we can</p> <p>7 look at --</p> <p>8 A. Right.</p> <p>9 Q. -- as to who is on the board. Okay.</p> <p>10 A. Right.</p> <p>11 Q. Swinging back to you as the chief, okay, in</p> <p>12 this document, Directive 1.2, it says you're</p> <p>13 responsible for planning, directing, and various other</p> <p>14 things. Okay? It didn't mention the formulation of</p> <p>15 policy. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. So I'm just sort of trying to understand how</p> <p>18 that might work. Okay? Under captains, we go to the</p> <p>19 next page, it says the captain shall be responsible</p> <p>20 for the formulation and implementation of departmental</p> <p>21 or division policies, then it goes on. You see that;</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. So there are captains over various divisions of</p>	<p>1 Q. Then those policies go up a chain of command to</p> <p>2 you?</p> <p>3 A. Correct.</p> <p>4 Q. Those recommendations go up a chain of command</p> <p>5 to you? I'm sorry.</p> <p>6 A. Yes.</p> <p>7 Q. And if you approve them, where would they go</p> <p>8 from you?</p> <p>9 A. They need the approval of the administrative</p> <p>10 board and then they would be put in as policy.</p> <p>11 Q. You can have a captain in charge of some other</p> <p>12 division; right?</p> <p>13 A. Yes.</p> <p>14 Q. Let's just say internal affairs.</p> <p>15 A. Yes.</p> <p>16 Q. That captain might recommend certain changes in</p> <p>17 policies; right?</p> <p>18 A. Yes.</p> <p>19 Q. They'd have to come to you?</p> <p>20 A. Yes.</p> <p>21 Q. You, as the chief executive officer for the</p> <p>22 police function, would have to have your input into</p> <p>23 any changes; right?</p> <p>24 A. Yes.</p>
Page 79	Page 81
<p>1 the city police?</p> <p>2 A. Yes.</p> <p>3 Q. They also have responsibility for various</p> <p>4 units?</p> <p>5 A. Yes.</p> <p>6 Q. There may be policy changes needed within a</p> <p>7 division or a unit that could happen; right?</p> <p>8 A. Correct.</p> <p>9 Q. It would be the responsibility of the captain</p> <p>10 to be formulating recommendations for changes in</p> <p>11 policies?</p> <p>12 A. Yes.</p> <p>13 Q. So, for example, Captain Nancy Dietz is</p> <p>14 currently assigned to the human resource function;</p> <p>15 isn't that right?</p> <p>16 A. Yes.</p> <p>17 Q. So she is the captain responsible for human</p> <p>18 resources?</p> <p>19 A. Yes.</p> <p>20 Q. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. She's involved in formulating all kinds of</p> <p>23 recommendations for policies affecting the department?</p> <p>24 A. Yes, she is.</p>	<p>1 Q. Those kinds of policy changes coming up through</p> <p>2 the captains would have to go from you to the</p> <p>3 administrative board of the City of Wilmington?</p> <p>4 A. Yes. From -- right, from me to the</p> <p>5 administrative board, but it would be the chain of</p> <p>6 command from the captain to inspector for my approval.</p> <p>7 And also if it's policy change, also to the director</p> <p>8 of public safety.</p> <p>9 Q. We had talked about your duties here. Let's</p> <p>10 look under "Inspector." This is page P015 under</p> <p>11 Directive 1.2 in Szczerba 10.</p> <p>12 The authority of the inspector is stated</p> <p>13 there; right?</p> <p>14 A. Yes.</p> <p>15 Q. The responsibilities of the inspector are</p> <p>16 stated there; right?</p> <p>17 A. Yes.</p> <p>18 Q. It says "Inspector," and I'm reading the first</p> <p>19 paragraph, the second sentence, "Inspector."</p> <p>20 A. Yes.</p> <p>21 Q. He's authorized to implement all matters of</p> <p>22 policy and discipline to all divisions. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p>

21 (Pages 78 to 81)

Michael J. Szczerba

Page 82	Page 84
<p>1 Q. It didn't say anywhere there that the</p> <p>2 inspectors are responsible for the formulation of</p> <p>3 departmental policies, did it?</p> <p>4 A. No, it does not say that.</p> <p>5 Q. It doesn't say there that they're responsible</p> <p>6 for the formulation of any of the policies for various</p> <p>7 divisions or units?</p> <p>8 A. Correct.</p> <p>9 Q. Right?</p> <p>10 A. Yes.</p> <p>11 Q. That all comes up through the captains --</p> <p>12 A. Yes.</p> <p>13 Q. -- as stated in a Directive 1.2; is that</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And if we go back to Directive 3.0 and 2.0 that</p> <p>17 dealt with the inspectors of uniformed operations and</p> <p>18 the inspector of investigative operations, there was</p> <p>19 nothing in there indicating that they are responsible</p> <p>20 for the formulation of policies; isn't that correct?</p> <p>21 A. Correct.</p> <p>22 Q. So would you agree with me that functionally</p> <p>23 within the Wilmington Police Department, it's not part</p> <p>24 of the responsibility of the inspectors to be the</p>	<p>1 A. Right.</p> <p>2 Q. The captains who have operational</p> <p>3 responsibility for their divisions and work on a</p> <p>4 day-to-day basis for their divisions, they can see a</p> <p>5 need; right?</p> <p>6 A. Yes.</p> <p>7 Q. In their description here it specifically says</p> <p>8 they formulate policies?</p> <p>9 A. Essentially it would be a project manager.</p> <p>10 Q. Has the mayor of Wilmington ever directed you</p> <p>11 to reexamine or formulate policies affecting the</p> <p>12 Wilmington Police Department?</p> <p>13 A. Bring about some changes as far as policy</p> <p>14 changes, no. But as far as assignments, yes.</p> <p>15 Q. Okay. There's this ongoing debate on where</p> <p>16 people should be assigned in the City of Wilmington,</p> <p>17 that kind of stuff?</p> <p>18 A. Correct.</p> <p>19 Q. Our elected officials, as part of their</p> <p>20 responsibilities, express their opinions on those</p> <p>21 kinds of things; right?</p> <p>22 A. Yes, they do.</p> <p>23 Q. And the mayor is the highest elected official?</p> <p>24 A. Yes.</p>
Page 83	Page 85
<p>1 front-line people formulating policies?</p> <p>2 A. Yes, that's correct. However, working in</p> <p>3 cooperation with their respective captains, they can</p> <p>4 work in cooperative effort, and sometimes that does</p> <p>5 occur.</p> <p>6 Q. The captain reports to them?</p> <p>7 A. Sure. If they see the need, the captain could</p> <p>8 be assigned from the inspector to try to explore</p> <p>9 formulating some type of policy change.</p> <p>10 Q. I'm sorry. I don't really follow that. Could</p> <p>11 I ask you to just to rephrase that?</p> <p>12 A. The inspector may see a need to formulate a</p> <p>13 policy change, and he would then give that assignment</p> <p>14 to the captain and those two possibly could work on</p> <p>15 it, or with the autonomy of the captain, they would be</p> <p>16 able to work on it him- or herself and then still be</p> <p>17 reporting back to the inspector.</p> <p>18 Q. So you could see a need for a policy change and</p> <p>19 ask somebody to work on something; right?</p> <p>20 A. Correct.</p> <p>21 Q. An inspector could see a need --</p> <p>22 A. Yes.</p> <p>23 Q. -- and you're saying could ask somebody to do</p> <p>24 something?</p>	<p>1 Q. It would be within his authority to discuss</p> <p>2 with you those kinds of things?</p> <p>3 A. Yes.</p> <p>4 Q. Sure. Okay.</p> <p>5 But as far as what the punishment for</p> <p>6 infractions ought to be, what kind of hearing</p> <p>7 procedures you ought to have, all the other kinds of</p> <p>8 things that are found in The White Book, has the mayor</p> <p>9 of Wilmington ever given to you assignments on policy</p> <p>10 changes that he would like found in The White Book?</p> <p>11 A. No.</p> <p>12 Q. Has the mayor of Wilmington ever given an</p> <p>13 assignment to any of the two inspectors working under</p> <p>14 you as far as changes he would want done in The White</p> <p>15 Book?</p> <p>16 MS. BUTCHER: Object as to form.</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. You have a chain of command; right?</p> <p>19 A. Yes.</p> <p>20 Q. Nothing has ever come through to you?</p> <p>21 A. Right.</p> <p>22 Q. Are you aware of either of your inspectors</p> <p>23 performing a policy consultative function for the City</p> <p>24 of Wilmington?</p>

Michael J. Szczerba

<p style="text-align: right;">Page 86</p> <p>1 A. No, I am not. However, there is sometimes 2 where a directive from the mayor to the director of 3 public safety, the director of public safety may 4 address those with the inspectors. 5 Q. So are you saying that there are communications 6 from the mayor of the City of Wilmington through the 7 director of public safety to your inspectors that 8 don't go through you and the chain of command? 9 MS. BUTCHER: Object as to form. 10 A. Yes. And eventually I may be notified of that, 11 but that's correct. 12 Q. Where would we find those kinds of 13 communications? 14 A. They're verbally. 15 Q. Right. There may be discussion? 16 A. Right. 17 Q. So you're saying those kinds of instances would 18 have been verbal instances? 19 A. Correct. 20 Q. What do you remember of any such incidents, 21 occurrences? 22 A. Maybe with personnel, how they're assigned 23 maybe to a particular district or with our community 24 policing officers.</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No. 2 Q. Is any such responsibility, any part of the 3 day-to-day execution of their responsibilities? 4 A. No. 5 Q. Are you aware of Inspector Wright or Inspector 6 Howell being called into meetings with the mayor and 7 Mr. Montgomery and other department heads of the City 8 of Wilmington to discuss policy for the City of 9 Wilmington? 10 A. Not that I'm aware of. 11 Q. Are you aware of their being called into those 12 kinds of meetings to discuss policies affecting the 13 Wilmington Police Department? 14 A. No. 15 Q. Are you aware of their being called into 16 meetings of the administrative board of the City of 17 Wilmington to give advice on the formulation or 18 approval of policies for the City of Wilmington? 19 A. Not that I'm aware of, but that is a 20 possibility. 21 Q. Are you saying when the administrative board is 22 debating anything, they can call in any city employee 23 to answer questions about something that might be 24 within the knowledge of the employee?</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Personnel? 2 A. Right, right. 3 Q. Assignments? 4 A. Yes. 5 Q. Okay. 6 A. The most recent example did come directly from 7 the mayor to the public safety director to me in 8 regards to how officers are assigned in the downtown 9 area here. 10 Q. Right. Okay. Assignment of officers, the six 11 downtown here, within three or four blocks versus six 12 in the Riverside area or whatever, do you characterize 13 those as a matter of policy or just something else? 14 A. Matter of deployment, not policy. 15 Q. Right. Right. Right. 16 Are you aware of Inspector Wright or 17 Inspector Howell serves in some sort of a consultative 18 capacity with the mayor of the City of Wilmington 19 giving him advice on the formulation of policy -- 20 A. No. 21 Q. -- for the City of Wilmington? 22 A. No. 23 Q. Is any such responsibility part of their 24 written job descriptions?</p>	<p style="text-align: right;">Page 89</p> <p>1 A. That's correct. For example, if a policy 2 within a particular division, a human resources 3 policy, you might have Captain Dietz to appear in 4 front of that board with one of her sergeants. 5 Q. Right. But the inspector of uniformed 6 operations and the inspector of investigative 7 operations, they are not listed on any organizational 8 document as being part of a consultative body for the 9 mayor to help him make policy for the City of 10 Wilmington? 11 A. No. 12 Q. They're not on any written document or chart to 13 help the city council of the City of Wilmington make 14 policy for the City of Wilmington? 15 A. No. 16 Q. You've been an officer since 1978? 17 A. Yes. 18 Q. Over that period of time, have you ever been 19 aware of inspectors serving as a consultative body for 20 mayors of the City of Wilmington or the city council? 21 MS. BUTCHER: Object as to form. 22 A. Not that I'm aware of, but there may be some 23 confusion, too. We have, for example, a public safety 24 committee meeting. May have inspectors appearing at</p>

Michael J. Szczerba

Page 90	Page 92
<p>1 that public safety.</p> <p>2 Q. Sure.</p> <p>3 A. And the members of that committee on council</p> <p>4 may be exploring implementation of a new law or</p> <p>5 developing new law ordinance.</p> <p>6 Q. Sure. Public safety committee of the city</p> <p>7 council?</p> <p>8 A. And have the input of the inspectors.</p> <p>9 Q. They may be talking about deployments or all</p> <p>10 sorts of things?</p> <p>11 A. Yes.</p> <p>12 Q. And if it's a human resources thing, they may</p> <p>13 ask Captain Dietz to come in so she, as the hands-on</p> <p>14 person, would be able to answer questions?</p> <p>15 A. Right.</p> <p>16 Q. I understand that. Any commander within the</p> <p>17 police department could be called upon by the public</p> <p>18 safety committee; right?</p> <p>19 MS. BUTCHER: Object as to form.</p> <p>20 A. Yes. Most likely it would occur through me and</p> <p>21 sometimes I have them appearing alongside of me, the</p> <p>22 public safety committee meeting, if they have the</p> <p>23 expertise.</p> <p>24 Q. But, once again, as a hierarchical organization</p>	<p>1 position of inspector or for captain?</p> <p>2 A. Yes.</p> <p>3 Q. If we are looking at captain, the very last</p> <p>4 page again, under "Examples of Work Performed," the</p> <p>5 third category, is it true that it says the captain of</p> <p>6 police shall be responsible, it says, once again, for</p> <p>7 the formulation of departmental or divisional</p> <p>8 policies?</p> <p>9 A. Yes.</p> <p>10 Q. If we flip to the page before for inspectors,</p> <p>11 do you see under "Nature of Work Performed"?</p> <p>12 A. Yes.</p> <p>13 Q. The second paragraph?</p> <p>14 A. Yes.</p> <p>15 Q. The second sentence, "He/she shall be</p> <p>16 authorized to implement all matters of policy" is that</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Nothing is listed in there about inspectors</p> <p>20 formulating policies; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. Nothing is in there about being on advisory</p> <p>23 capacity for the mayor of the City of Wilmington; is</p> <p>24 that right?</p>
Page 91	Page 93
<p>1 with a chain of command, as you say, you'd be involved</p> <p>2 in that?</p> <p>3 A. Yes.</p> <p>4 Q. Now, if we look at the last three pages of</p> <p>5 Szczerba Exhibit Number 10, let's go three from the</p> <p>6 back. We have a chief of police document from the</p> <p>7 time of Mayor Sills. Do you see that up in the</p> <p>8 left-hand corner?</p> <p>9 A. Yes.</p> <p>10 Q. This is the kind of document that the personnel</p> <p>11 department of the City of Wilmington puts together</p> <p>12 when there's a job announcement; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. The next two pages is a job description for a</p> <p>15 police inspector, and the last page is a job</p> <p>16 description for a captain of the police department; is</p> <p>17 that right?</p> <p>18 A. Yes.</p> <p>19 Q. Those last two documents actually say</p> <p>20 "Department of Personnel" in the upper right-hand</p> <p>21 corner; right?</p> <p>22 A. Yes.</p> <p>23 Q. Are these accurate copies of job descriptions</p> <p>24 you've seen coming from the personnel office for the</p>	<p>1 A. That's right.</p> <p>2 Q. It also has certain educational requirements.</p> <p>3 It says to be inspector you have to have completed a</p> <p>4 four-year college. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Gilbert Howell, I haven't seen a resume from</p> <p>7 him, it's one of those things that hasn't been</p> <p>8 produced yet in the case. But do you know at the time</p> <p>9 he was promoted in 2005 whether he had a four-year</p> <p>10 college degree or related experience?</p> <p>11 A. That I'm not sure of.</p> <p>12 Q. You just don't know?</p> <p>13 A. Right.</p> <p>14 Q. That's fine. We can always ask him.</p> <p>15 Let's look at the chief of police one. It</p> <p>16 talks about what you told me a little earlier. Why</p> <p>17 don't I ask you to just quietly read this one over so</p> <p>18 that you have it in your mind. Okay?</p> <p>19 A. Okay. (The witness reviews the document.)</p> <p>20 Q. Does this accurately describe the nature of the</p> <p>21 work you performed as chief?</p> <p>22 A. Yes.</p> <p>23 Q. It gives some examples of the kinds of things</p> <p>24 you do; right?</p>

24 (Pages 90 to 93)

Michael J. Szczerba

Page 94	Page 96
<p>1 A. That's correct.</p> <p>2 Q. So, for example, under "Examples of Work</p> <p>3 Performed," the very first words in that paragraph</p> <p>4 are: "This position sets policy and direction for law</p> <p>5 enforcement in the City." Is that what it says?</p> <p>6 A. Yes.</p> <p>7 Q. Is that a true statement?</p> <p>8 A. Yes.</p> <p>9 Q. Then we look at the last sentence in that</p> <p>10 paragraph. "The position demands that this individual</p> <p>11 plans police policies and procedures...." Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. Those are responsibilities you have; right?</p> <p>15 A. Yes.</p> <p>16 Q. The next page, the inspectors, it doesn't say</p> <p>17 the inspectors plan police policies and procedures,</p> <p>18 does it?</p> <p>19 A. No.</p> <p>20 Q. Okay. I think we are done with that.</p> <p>21 A. Getting on to this form 2, you had me review</p> <p>22 it.</p> <p>23 Q. Go ahead.</p> <p>24 A. Nature of work performed, the second sentence,</p>	<p>1 am not.</p> <p>2 Q. Okay.</p> <p>3 A. Also, when there is the existence of the public</p> <p>4 safety director's position, I am sandwiched in between</p> <p>5 the public safety director's position, who actually</p> <p>6 should be earning a higher salary than me, and a</p> <p>7 collective bargaining agreement. So essentially I'm</p> <p>8 squeezed out and left out as far as salary is</p> <p>9 concerned.</p> <p>10 Q. Now, this document is dated August 23rd, 2005.</p> <p>11 Does it appear to accurately depict what the pay</p> <p>12 scales were at that time?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Thank you.</p> <p>15 MR. NEUBERGER: Let's mark this next one as</p> <p>16 Exhibit 12.</p> <p>17 (Szczerba Exhibit 12 was marked for</p> <p>18 identification.)</p> <p>19 BY MR. NEUBERGER:</p> <p>20 Q. Is this an announcement that the Office of</p> <p>21 Public Safety, Department of Police, made on</p> <p>22 November 10, 2005?</p> <p>23 A. Yes.</p> <p>24 Q. Did this, using its own words, did this</p>
Page 95	Page 97
<p>1 "position reports directly to the office of mayor and</p> <p>2 through the administrative assistant." There's a step</p> <p>3 in between there.</p> <p>4 Q. That's inaccurate. What you told me earlier</p> <p>5 about the office or director of public safety?</p> <p>6 A. I just wanted to clarify that.</p> <p>7 Q. I appreciate that.</p> <p>8 MR. NEUBERGER: Now we have another</p> <p>9 document, one page marked P102. Let's mark this as</p> <p>10 Szczerba 11.</p> <p>11 (Szczerba Exhibit 11 was marked for</p> <p>12 identification.)</p> <p>13 BY MR. NEUBERGER:</p> <p>14 Q. This document for August of 2005 seems to</p> <p>15 indicate that the inspectors can even be paid more</p> <p>16 than the chief. You told me a little earlier you even</p> <p>17 have less rights under state law than all these other</p> <p>18 public employees. Is that true, that the inspectors</p> <p>19 can be paid more than you?</p> <p>20 A. Yes, that's correct.</p> <p>21 Q. Do you have any reason or do you understand how</p> <p>22 that ever happened?</p> <p>23 A. You pretty much covered it in that they're</p> <p>24 represented by a collective bargaining agreement and I</p>	<p>1 indicate that the following departmental promotions</p> <p>2 were effective as of a certain time?</p> <p>3 A. Yes.</p> <p>4 Q. This indicates Gilbert's selection to the rank</p> <p>5 of inspector?</p> <p>6 A. Yes.</p> <p>7 Q. Did he become the incumbent in that office on</p> <p>8 Saturday, October 29, 2005?</p> <p>9 A. Yes.</p> <p>10 Q. That was his first day in that rank?</p> <p>11 A. Yes.</p> <p>12 Q. Now, did you recommend to Mayor James Baker</p> <p>13 that Nancy Dietz, Captain Nancy Dietz, be selected for</p> <p>14 that job?</p> <p>15 A. Yes.</p> <p>16 Q. Did you feel that she was the most qualified</p> <p>17 person for that job?</p> <p>18 A. Yes.</p> <p>19 Q. Did you feel that she was more qualified for</p> <p>20 the job than Captain Gilbert Howell?</p> <p>21 A. Yes. He would be included in a group of people</p> <p>22 that I considered her more qualified.</p> <p>23 Q. Yes.</p> <p>24 A. Yes.</p>

25 (Pages 94 to 97)

Michael J. Szczerba

<p style="text-align: right;">Page 98</p> <p>1 Q. Did you feel that her attendance record was 2 better than his attendance record? 3 A. I believe so, yes. 4 Q. Did you feel that her disposition was such that 5 she would be a better person in that job than Gilbert 6 Howell? 7 A. Yes. 8 Q. In making your judgment for your 9 recommendations, was the various candidates' loyalty 10 to the department a factor that you considered? 11 A. Yes. 12 Q. Did you believe that, using a factor of loyalty 13 to the department, that she was a better selection 14 than Gilbert Howell? 15 A. Yes, but not in that category alone. That was 16 one of the categories. 17 Q. No. I'm just trying to identify some 18 categories. 19 A. Okay. 20 Q. I guess, just to jump back, did you ever put 21 your recommendation in writing? 22 A. No, I did not. 23 Q. So there's not like a document I can look at? 24 A. No.</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. From what you knew of her performance, her 2 performance on the job, did you feel that her 3 performance better qualified her for the job than 4 Gilbert Howell? 5 A. Yes. 6 Q. Did you feel that her disciplinary history 7 better qualified her for the job than Gilbert Howell? 8 A. Yes. 9 Q. Did you feel that her experience in the various 10 assignments she had held within the Wilmington Police 11 Department better qualified her for the job than 12 Gilbert Howell? 13 A. Yes. 14 MR. NEUBERGER: I have to take a break. 15 Can we just take a ten-minute break? 16 (A recess was taken at this time.) 17 BY MR. NEUBERGER: 18 Q. We will actually go into some documents later. 19 It looks like people on the force engage in some sort 20 of continuing education, you go to seminars on how to 21 be a hostage negotiator and antiterrorism. 22 Is that something that the officers and the 23 commanders under your command are encouraged to do? 24 A. Yes.</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. So I'm just trying to probe your memory. 2 A. Right. 3 Q. Was his or her educational background, formal 4 educational background a factor that you had 5 considered? 6 A. Yes, that was taken into consideration. 7 Q. Did you feel that she had a better educational 8 background than he did for the job? 9 A. Yes. 10 Q. Did you feel that the leadership skills she had 11 demonstrated better qualified her for the job than 12 Gilbert Howell? 13 A. Yes. 14 Q. Did you feel that her knowledge of the 15 department better qualified her for the job than 16 Gilbert Howell? 17 A. Yes. 18 Q. Did you feel that the most written performance 19 evaluation that we had talked about earlier today 20 better qualified her for the job than Gilbert Howell? 21 A. Yes. After review of that today, yes. 22 Q. Right. Back then do you remember looking at 23 that document? 24 A. No.</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Are they required to do so many hours a year, 2 or you just encourage people? 3 A. Both. I encourage them and they are required 4 by the council and police training, I believe 5 presently it's 16 hours. I'd have to refer to the 6 commanding officer of the Human Resource Division, but 7 I believe it's 16 hours. 8 Q. Have you found Nancy Dietz to be a 9 conscientious person in trying to keep up her training 10 and skill levels? 11 A. Yes. 12 Q. Did you feel that, when you made your 13 recommendation to Mayor Baker, that she had 14 demonstrated through her training and skill levels 15 that she was more qualified than Gilbert Howell? 16 A. Yes. 17 Q. Did you feel that through those intangible 18 qualities found in a person's character, for want of a 19 better word, she had demonstrated that she was more 20 qualified than Gilbert Howell? 21 A. Yes. 22 Q. You were in I think what's called the Office of 23 Professional Standards now? 24 A. Yes.</p>

Michael J. Szczerba

Page 102	Page 104
<p>1 Q. The old Internal Affairs?</p> <p>2 A. Yes.</p> <p>3 Q. You were a sergeant investigator; right?</p> <p>4 A. Just a sergeant.</p> <p>5 Q. But there's two or three of you at the time,</p> <p>6 probably?</p> <p>7 A. Yes.</p> <p>8 Q. Then there was a captain?</p> <p>9 A. Yes.</p> <p>10 Q. Right?</p> <p>11 A. Yes.</p> <p>12 Q. Nancy Dietz has served as the captain in</p> <p>13 Internal Affairs. You're aware of that?</p> <p>14 A. That's right. I'm also aware of her service as</p> <p>15 an investigator.</p> <p>16 Q. And an investigator. Probably as a sergeant?</p> <p>17 A. Yes. Just a sergeant.</p> <p>18 Q. Is it true that the people who are selected</p> <p>19 within the Wilmington Police Department to be the</p> <p>20 commander for Internal Affairs are highly respected</p> <p>21 people?</p> <p>22 A. Yes.</p> <p>23 Q. Is it true that they have impeccable</p> <p>24 professional reputations?</p>	<p>1 process in placing Captain Dietz in that position.</p> <p>2 Q. Oh, so you're the one that put her in Internal</p> <p>3 Affairs?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. I forgot that.</p> <p>6 A. She hasn't.</p> <p>7 Q. So those were things that you looked to when</p> <p>8 you selected her?</p> <p>9 A. Yes.</p> <p>10 Q. You're telling me her reputation is one of the</p> <p>11 highest order within the police department?</p> <p>12 A. Yes.</p> <p>13 Q. You told me about the staffing levels of the</p> <p>14 department. Okay? Over a couple years. Okay? And</p> <p>15 is it true that the police department is a close-knit</p> <p>16 community?</p> <p>17 A. Yes.</p> <p>18 Q. And then there's always officers retiring;</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. To varying degrees, they keep up ties with</p> <p>22 what's happening in the force, don't they?</p> <p>23 MS. BUTCHER: Object as to form.</p> <p>24 A. I believe so.</p>
Page 103	Page 105
<p>1 A. Yes.</p> <p>2 Q. Part of the reason for putting people like that</p> <p>3 in there is so that the decisions of Internal Affairs</p> <p>4 are respected by the uniformed officers; right?</p> <p>5 A. That's correct.</p> <p>6 Q. Are the people who are selected to be the</p> <p>7 commander of Internal Affairs known to be highly</p> <p>8 ethical people?</p> <p>9 A. Yes.</p> <p>10 Q. Are they known to be people who realize that to</p> <p>11 protect the public and have an efficient police</p> <p>12 department, that you do have to abide by the rules and</p> <p>13 regulations applicable to law enforcement?</p> <p>14 A. Yes.</p> <p>15 MS. BUTCHER: Object as to form.</p> <p>16 Q. Did you find that when Nancy Dietz was in the</p> <p>17 Office of Internal Affairs she demonstrated those</p> <p>18 kinds of qualities?</p> <p>19 A. Yes.</p> <p>20 Q. Those kinds of qualities that she demonstrated</p> <p>21 to be there, did she have better qualities than</p> <p>22 Gilbert Howell in those kinds of areas?</p> <p>23 MS. BUTCHER: Object as to form.</p> <p>24 A. I believe so, and that was part of my decision</p>	<p>1 Q. Based on your experience?</p> <p>2 A. Yes.</p> <p>3 Q. Do you ever go over to the FOP lodge?</p> <p>4 A. Occasionally I attend a meeting.</p> <p>5 Q. There's also social events going on over there;</p> <p>6 right?</p> <p>7 A. That's separate. I think maybe you are</p> <p>8 referring to the social club aspect of the Delaware</p> <p>9 Association of Police separate from the FOP. But as</p> <p>10 chief, I do periodically attend FOP meetings.</p> <p>11 Q. What I'm trying to say is that the active</p> <p>12 members of the force, I think you told me, form a</p> <p>13 close-knit community?</p> <p>14 A. For the most part, yes.</p> <p>15 Q. When I was asking you about her reputation, I</p> <p>16 think you were telling me about what her reputation</p> <p>17 was within the force; right?</p> <p>18 A. Yes.</p> <p>19 Q. And then there are people who have been in the</p> <p>20 force but who have retired; correct?</p> <p>21 A. Yes.</p> <p>22 Q. They still keep up contacts with other officers</p> <p>23 they've worked with. Isn't that a fair statement?</p> <p>24 A. Yes.</p>

27 (Pages 102 to 105)

Michael J. Szczerba

Page 106	Page 108
<p>1 MS. BUTCHER: Object as to form.</p> <p>2 A. Yes. And there are some family members.</p> <p>3 Q. I'm only asking you based on your personal</p> <p>4 experience.</p> <p>5 A. Yes.</p> <p>6 Q. Right. Yes.</p> <p>7 When Nancy Dietz was not selected for the</p> <p>8 position of inspector within the Wilmington Police</p> <p>9 Department, did that affect her reputation within that</p> <p>10 close-knit community?</p> <p>11 MS. CHEEK: Objection to form.</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. Did you ever hear anybody say anything about</p> <p>14 did Nancy have some deep, dark secret in her</p> <p>15 background, that's why she wasn't selected, I suspect?</p> <p>16 Anything like that?</p> <p>17 A. No.</p> <p>18 Q. So you're telling me that the fact that she</p> <p>19 wasn't selected hasn't lowered her in the esteem of</p> <p>20 her fellow officers based on what you know?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Thanks.</p> <p>23 Are there any other characteristics that</p> <p>24 Nancy Dietz has demonstrated that were superior to</p>	<p>1 to a performance rating, but they are things that I</p> <p>2 keep an eye on for the full-rounded candidate, and</p> <p>3 that's one thing that I think hasn't been mentioned</p> <p>4 here this morning.</p> <p>5 Q. Anything else you might remember right now that</p> <p>6 hasn't been mentioned?</p> <p>7 A. No. Just looking at, you know, when I make</p> <p>8 those selections, I look at -- for any promotion,</p> <p>9 whether it be for sergeant or for the rank of</p> <p>10 inspector looking who I believe that the men and women</p> <p>11 or the Wilmington Department of Police would best</p> <p>12 follow. Not that there aren't other qualified</p> <p>13 candidates that could fill that position, but I have</p> <p>14 to make that decision from a group of candidates who I</p> <p>15 believe is the best.</p> <p>16 And, you know, in this case that particular</p> <p>17 to fill that position, I thought that she was the best</p> <p>18 candidate that I had available within that group.</p> <p>19 So, in essence, it wasn't, you know,</p> <p>20 Captain Nancy Dietz versus Captain Gilbert Howell. It</p> <p>21 was Captain Dietz versus the rest of the folks, the</p> <p>22 rest of the captains who were eligible. And it was</p> <p>23 Captain Howell versus the rest of the folks who were</p> <p>24 eligible.</p>
Page 107	Page 109
<p>1 those of Gilbert Howell that led to your</p> <p>2 recommendation for her for the selection for inspector</p> <p>3 in 2005?</p> <p>4 MS. BUTCHER: Object as to form.</p> <p>5 A. Yes.</p> <p>6 Q. What would those have been?</p> <p>7 A. One, in looking at the job responsibilities, I</p> <p>8 don't know where it was with the job description,</p> <p>9 maybe about being involved with the community. I know</p> <p>10 she's been involved with the community all along.</p> <p>11 Always steps up to this present day.</p> <p>12 One example being active with the Big</p> <p>13 Sisters program now, even this present day being</p> <p>14 involved with the program where the women that are</p> <p>15 incarcerated, going in, making recordings so they can</p> <p>16 read to their children. She's active in many</p> <p>17 community outreaches. She's been active as the human</p> <p>18 resources commander because in that responsibility she</p> <p>19 also commands our police academy. And that has been</p> <p>20 reflected, her philosophy has been reflected in the</p> <p>21 police academy with the outreach that they've had in</p> <p>22 the community.</p> <p>23 So I think that's an important aspect.</p> <p>24 It's one of those things that maybe they don't make it</p>	<p>1 Q. Are you telling me that the pool of available</p> <p>2 people was considered to be the captains of the police</p> <p>3 force?</p> <p>4 A. That's correct.</p> <p>5 Q. For inspector?</p> <p>6 A. That's what I was considering.</p> <p>7 Q. You weren't considering lieutenants or</p> <p>8 anything?</p> <p>9 A. No, I was not.</p> <p>10 Q. You're saying of the pool of captains, she was</p> <p>11 the most qualified?</p> <p>12 A. Yes.</p> <p>13 Q. Got you. I understand.</p> <p>14 We've alleged in the complaint in paragraph</p> <p>15 67 that "At all times while she was working for the</p> <p>16 force, Captain Dietz was a diligent, honest, and loyal</p> <p>17 employee who always performed her job in an exemplary</p> <p>18 manner."</p> <p>19 Would you agree with that statement?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know that she attended the FBI Academy?</p> <p>22 A. Yes, I'm aware of that.</p> <p>23 MR. NEUBERGER: Okay. Let's just mark this</p> <p>24 as 13.</p>

28 (Pages 106 to 109)

Michael J. Szczerba

Page 110	Page 112
<p>1 (Szczerba Exhibit 13 was marked for 2 identification.) 3 BY MR. NEUBERGER: 4 Q. This is a transcript that Nancy would testify 5 that she received from the University of Virginia 6 after attending the FBI Academy. Does that appear to 7 be what this is? 8 A. Yes. 9 Q. This indicates that in 1987 she attended the 10 academy. Do you see that? 11 A. Yes. 12 Q. Then if you look at the second page of this 13 document, this appears to be a copy of her diploma 14 from Penn State University. Do you see that? 15 A. Yes. 16 Q. Is it true that the Wilmington Police 17 Department had to select Nancy Dietz to go to the FBI 18 Academy? 19 A. That's correct. 20 Q. When those selections are made, only officers 21 with the highest promise are chosen for that? 22 A. Yes. She would be one of those officers, yes. 23 Q. I'm sure there are other people on the force 24 who have gone to the FBI Academy?</p>	<p>1 enforcement officers can go around the country to take 2 the kind of training that's offered at the FBI 3 Academy? Would you agree with that? 4 A. Yes. 5 Q. I forget the names. Do you remember where any 6 of them are? 7 A. One school in Chicago. I believe that's mainly 8 traffic oriented. There's a school out at the 9 University of Louisville. Of course, the FBI Academy. 10 And then I believe there's one in south Florida, but I 11 don't know the official title of those schools, but 12 they are the usual -- 13 Q. I don't think we've received Gilbert Howell's 14 resume or educational information in the documents 15 that have been turned over to us yet, so I just have 16 to ask you based on what you might know about memory 17 or whatever: Are you aware of his ever attending any 18 of those schools? 19 A. Not to my knowledge. 20 Q. So if he hasn't attended any of those schools 21 and Captain Dietz is a graduate of the FBI Academy 22 with a cumulative average around 3.7 or something like 23 that, would that demonstrate that she was more 24 qualified for the position in the area of educational</p>
Page 111	Page 113
<p>1 A. It's actually selected by the police department 2 or recommended by the police department, but the 3 actual selection would be made by the FBI. 4 Q. Right. So your department recommends people? 5 A. Right. 6 Q. And so your department couldn't guarantee that 7 she went to the FBI Academy? 8 A. No. 9 Q. The FBI made its own independent decision made 10 on her record that they'd like to have her attend the 11 academy. Is that what you are telling me? 12 A. Yes. I know by experience of being selected an 13 alternate in 1991, but never made it that far. 14 Q. But you got promoted then? 15 A. Yes. 16 Q. Gilbert Howell is not a graduate of the FBI 17 Academy? 18 A. No, he's not. 19 Q. There are a couple other places that people go 20 to. Did he go to the Northeastern School or something 21 like that? 22 A. I'm not aware of that. 23 Q. Are you aware of any, I think there's two, 24 maybe three or four places where outstanding law</p>	<p>1 background than Gilbert Howell? 2 A. Yes, in that category, yes. 3 Q. When the nominations are made to the FBI 4 Academy by the department, is it ultimately the chief 5 of police of the City of Wilmington who selects the 6 nominees? 7 A. Yes. Also, I'd like to include in that that 8 since I've been in as chief, when we have availability 9 of a position for a Wilmington police officer, I 10 utilize the past graduates of the FBI National Academy 11 to make a recommendation of a candidate or candidates 12 to me, although, but ultimately I make that selection. 13 But I do include past graduates to get the opinion 14 throughout the department, so get a cross-section of 15 the department to refer candidates or candidates back 16 to me. 17 Q. Just to make sure I understood what you said, I 18 believe you are saying you consult with the graduates 19 of the academy within the department when you are 20 making what kind of decisions? 21 A. Making decision to recommend someone for the 22 FBI Academy. 23 Q. Got you. 24 A. So exclusively I know it's not leadership by</p>

Michael J. Szczerba

Page 114	Page 116
<p>1 committee, but I get the input of other folks within 2 the police department, but ultimately I will be the 3 one to make that decision.</p> <p>4 Also, we do not pick an officer -- when I 5 announce the positions that are opened, and if you're 6 interested, to apply, so as not the entire department 7 that we take into consideration, only those officers 8 that apply themselves.</p> <p>9 Right now through the requirement of the 10 FBI Academy, it's only people of the rank of 11 lieutenant or above are to be considered. So I do 12 have that restriction.</p> <p>13 But other than that, the candidate, if he 14 or she is interested in attending the academy, they at 15 least have to show the initiative that they're 16 interested.</p> <p>17 Q. Are you aware that Nancy Dietz is currently 18 enrolled in Wilmington College's graduate program for 19 leadership?</p> <p>20 A. Yes, I am, and that's by way of some tuition 21 reimbursement I'm aware of that, and also was asked as 22 sort of a reference to -- for the graduate school. So 23 I did submit a reference.</p> <p>24 Q. Okay.</p>	<p>1 Q. You were two years on the force. She comes 2 onboard around 1980. Do you remember her being a 3 patrol officer?</p> <p>4 A. Yes, I do. I believe maybe even at one point 5 we may have been on the same patrol platoon, so that 6 means we were working the same schedule.</p> <p>7 Q. Aside from serving in patrol, she says she was 8 an investigator in vice. Do you agree with that?</p> <p>9 A. Yes.</p> <p>10 Q. Then she also was an investigator in criminal 11 investigations?</p> <p>12 A. Yes.</p> <p>13 Q. Do you agree with that?</p> <p>14 A. Yes.</p> <p>15 Q. Then you told us earlier that you agree that 16 she was an investigator in the Office of Professional 17 Standards; right?</p> <p>18 A. Yes.</p> <p>19 Q. Do you agree that she did at some point in time 20 as a sergeant command a patrol platoon --</p> <p>21 A. Yes.</p> <p>22 Q. -- in uniformed services? Okay.</p> <p>23 So a patrol platoon would have involved 24 supervision of about 25 uniformed officers? Does that</p>
Page 115	Page 117
<p>1 MR. NEUBERGER: Let's mark this as our next 2 exhibit, Exhibit 14.</p> <p>3 (Szczerba Exhibit 14 was marked for 4 identification.)</p> <p>5 BY MR. NEUBERGER:</p> <p>6 Q. I put in front of you what Nancy will testify 7 is a two-page resume of hers that she had prepared and 8 would probably be found in her personnel records. 9 Okay?</p> <p>10 If we had Gilbert Howell's resume, which 11 hasn't been produced to us, would you agree we would 12 be able to make a comparison of their assignments, 13 their career paths?</p> <p>14 A. Yes.</p> <p>15 Q. If educational background is listed on Gilbert 16 Howell's, we would be able to make comparisons there? 17 Yes?</p> <p>18 A. Yes.</p> <p>19 Q. And memberships, awards and things like that, 20 if Gilbert Howell has any, we can make comparisons 21 there, also?</p> <p>22 A. Yes.</p> <p>23 Q. Nancy started off in patrol. Do you see that?</p> <p>24 A. Yes.</p>	<p>1 sound about fair?</p> <p>2 A. Yes, on the platoon. And then the duties are 3 split up amongst a couple street sergeants on that in 4 addition to our house sergeants so that direct 5 supervisory duties would be split up amongst those 25. 6 So we make a range of supervision of about nine 7 officers for a street sergeant.</p> <p>8 Q. Just to educate me a little bit on your force, 9 then somebody would be doing the night shift versus 10 the day shift?</p> <p>11 A. They would work a rotating shift.</p> <p>12 Q. So they are all working rotating shifts?</p> <p>13 A. Right.</p> <p>14 Q. So she might be working supervising people on 15 the rotating day shift this time and then another time 16 on rotating night shift?</p> <p>17 A. She would be working right along with them.</p> <p>18 Q. With them. But I'm saying she wouldn't always 19 be day shift? She would be night shift sometimes?</p> <p>20 A. Right.</p> <p>21 Q. So with a platoon of 25 officers, back in the 22 1980s, was the force on what kind of work shifts? 23 Eight-hour shifts? Ten-hour shifts?</p> <p>24 A. Primarily eight-hour shifts, a seven-day duty</p>

30 (Pages 114 to 117)

Michael J. Szczerba

Page 118	Page 120
<p>1 tour. Probably at that time in 1980, changed -- the</p> <p>2 shift structure has changed over the years, been</p> <p>3 modified. But generally back then it would have been</p> <p>4 a seven-day rotation with an eight-hour tour of duty.</p> <p>5 Q. So when she was doing her tour of duty, you're</p> <p>6 saying as a road sergeant she would be responsible for</p> <p>7 around nine people who are actually out there on the</p> <p>8 road?</p> <p>9 A. Direct responsibilities. Then there would be</p> <p>10 days that maybe the other sergeant is not working, so</p> <p>11 that street sergeant would have all people who are on</p> <p>12 the street. That would be a total of 20, 25. There's</p> <p>13 a possibility there.</p> <p>14 Q. Okay. I understand.</p> <p>15 Then she was also, as a lieutenant she was</p> <p>16 a commander in patrol; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. All right. I got you.</p> <p>19 A. Basically when receiving the promotions to that</p> <p>20 of sergeant and lieutenant, generally that new</p> <p>21 promotee will go into the Uniformed Services Division</p> <p>22 for the experience of supervising within that division</p> <p>23 being the basic function of the police department.</p> <p>24 Q. So when she's either a sergeant in patrol or</p>	<p>1 Q. Then that's under Martin Donohue who is the</p> <p>2 inspector?</p> <p>3 A. Yes.</p> <p>4 Q. Then she's a lieutenant in criminal</p> <p>5 investigations for criminal investigations platoon?</p> <p>6 A. Yes.</p> <p>7 Q. That's, again, under Martin Donohue?</p> <p>8 A. Yes.</p> <p>9 Q. Then she becomes the captain and commanding</p> <p>10 officer in criminal investigations?</p> <p>11 A. Yes. That's presently under Inspector Donohue.</p> <p>12 I don't know going back to 1997 whether that would</p> <p>13 fall under him. I don't believe so.</p> <p>14 Q. Okay.</p> <p>15 A. Nonetheless, it would be the predecessor to</p> <p>16 Inspector Donohue of holding that position of the</p> <p>17 inspector of investigative operations.</p> <p>18 Q. I understand. Then you put her in charge of</p> <p>19 the Office of Professional Standards, and then lastly</p> <p>20 as the human resources captain; right?</p> <p>21 A. That's correct.</p> <p>22 Q. Is the human resources person the person who</p> <p>23 always commands the police academy?</p> <p>24 A. Yes.</p>
Page 119	Page 121
<p>1 she is a lieutenant in patrol, she's in the chain of</p> <p>2 command under the uniformed operations inspector?</p> <p>3 A. Yes.</p> <p>4 Q. So that's experience she had in the chain of</p> <p>5 command for the position that Gilbert Howell was</p> <p>6 selected for?</p> <p>7 A. Yes.</p> <p>8 Q. All right. When she was an investigator for</p> <p>9 then the Office of Professional Standards, when she</p> <p>10 was doing criminal investigation or working on the</p> <p>11 vice squad, she was in a different chain of command</p> <p>12 for the other inspector?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. I understand. So she has experience in</p> <p>15 both chains of commands?</p> <p>16 A. Yes.</p> <p>17 Q. Operational experience in both chains of</p> <p>18 commands?</p> <p>19 A. Correct.</p> <p>20 Q. So then she goes from a lieutenant in the</p> <p>21 patrol platoon to a lieutenant in human resources. So</p> <p>22 that would probably be the person right under the</p> <p>23 captain?</p> <p>24 A. Yes.</p>	<p>1 Q. So she's commanded the police academy since she</p> <p>2 became the human resources director?</p> <p>3 A. Yes. And she would have commanded as the</p> <p>4 lieutenant, also, as the deputy commander of the Human</p> <p>5 Resources Division, ultimately the responsibility of</p> <p>6 the police academy falls under the commanding officer</p> <p>7 of the Human Resources Division.</p> <p>8 But as far as the day-to-day operations, it</p> <p>9 would fall upon the lieutenant. She also had that</p> <p>10 experience as a lieutenant in the Human Resources</p> <p>11 Division in running a police academy.</p> <p>12 Q. I've seen commendations or accolades in her</p> <p>13 behalf indicating approval of the fact that she's been</p> <p>14 able to secure recruits, you know, from a diverse</p> <p>15 background, the kinds of people who would be able to</p> <p>16 serve all the different constituencies in the City of</p> <p>17 Wilmington. You are aware of that kind of a credit</p> <p>18 that's been given to her?</p> <p>19 A. Yes. Part of the credit would be coming from</p> <p>20 me, too, in that the effort that we put forth, it's a</p> <p>21 very challenging field in recruitment. Not only in</p> <p>22 law enforcement, but bringing qualified candidates</p> <p>23 into our work force.</p> <p>24 And I was quite impressed with the effort</p>

31 (Pages 118 to 121)

Michael J. Szczerba

Page 122	Page 124
<p>1 that was made this time and know we can make some 2 improvements, but, you know, even looking beyond 3 diversity, looking at gender and the color of one's 4 skin, even beyond that of calling into many different 5 areas in innovative recruiting and getting the word 6 out about our job openings.</p> <p>7 Q. Recruiting is the lifeblood of the Wilmington 8 Police Department, isn't it?</p> <p>9 A. That's correct.</p> <p>10 Q. I mean, Wilmington Police Department is not the 11 highest paid police department in the state?</p> <p>12 A. No.</p> <p>13 Q. It's probably the lowest paid among the State 14 Police or academy police?</p> <p>15 A. Yes.</p> <p>16 Q. Is that right?</p> <p>17 A. Yes, and other smaller municipalities. We are 18 below that and we have the challenge of a residency 19 requirement.</p> <p>20 Q. You have that.</p> <p>21 A. Yes. With the nature of the work in itself as 22 compared to the other major departments, it's -- they 23 do a fine job of what they do, but it's still not the 24 same responsibilities.</p>	<p>1 as a police department policing in any urban area, but 2 I think it's highlighted more so here in the State of 3 Delaware with having the City of Wilmington as the 4 only truly urban area. We stand alone there, and I 5 think that's part of why we stand alone in some of the 6 criticism that we receive.</p> <p>7 Q. I'm sure you're proud of the job you are doing, 8 that the Wilmington Police Department is doing for the 9 citizens of the city of Wilmington?</p> <p>10 A. Extremely proud.</p> <p>11 Q. And it's a difficult job?</p> <p>12 A. Yes, it is.</p> <p>13 Q. And the kind of people that you bring into the 14 Wilmington Police Department to do that difficult job, 15 their selection is an important thing?</p> <p>16 A. Yes, it is.</p> <p>17 Q. And finding the best raw material to make into 18 police officers to serve the City of Wilmington, is 19 that a very important function of the Wilmington 20 Police Department?</p> <p>21 A. Yes.</p> <p>22 Q. How has Nancy Dietz performed in finding that 23 raw material, the people who can make Wilmington 24 police officers good officers and who can do the</p>
Page 123	Page 125
<p>1 Q. A Wilmington police officer in one night on 2 patrol might have to respond to more violent incidents 3 than a state trooper on patrol in a week. Is that a 4 fair statement?</p> <p>5 MS. BUTCHER: Object as to form.</p> <p>6 Q. Based on your experience?</p> <p>7 A. Based on my experience, that's a possibility.</p> <p>8 Q. The Wilmington Police Department loses people 9 to the other police departments because they have a 10 higher rate of pay?</p> <p>11 MS. BUTCHER: Object as to form.</p> <p>12 Q. Do you see attrition because of that?</p> <p>13 A. That's one of the factors. Not a stand-alone 14 factor.</p> <p>15 Q. Right. There's a residency requirement and all 16 sorts of things; right?</p> <p>17 A. Yes.</p> <p>18 Q. Does the Wilmington Police Department have a 19 tough job to do in policing in the City of Wilmington 20 because of violence, drug use, things like that, the 21 kinds of crimes that you're devoted to preventing or 22 solving?</p> <p>23 MS. CHEEK: Objection to form.</p> <p>24 A. Yes. And it's not exclusive to us. Of course,</p>	<p>1 difficult job that a police officer in the City of 2 Wilmington does? How has she performed in that 3 function?</p> <p>4 MS. CHEEK: Object as to form.</p> <p>5 A. She has done an outstanding job in that area. 6 Not -- it doesn't end at recruitment. It doesn't end 7 at training. It ends up at the follow-up, and I think 8 there's been stepping up to another level, too, in the 9 following up on those officers on their probationary 10 period and keeping an eye on them where some 11 corrections need to be made, additional training, or 12 it may in some instances may end up in terminating 13 their employment because they don't cut the grade as 14 far as the professionalism that we are looking for on 15 the job.</p> <p>16 MR. NEUBERGER: Okay. We have some 17 documents from Nancy Dietz's personnel record that 18 she's provided to the defendants in this case as well 19 as more job evaluations I want to go through.</p> <p>20 So let's mark this as our next exhibit, 21 which is 15.</p> <p>22 (Szczerba Exhibit 15 was marked for 23 identification.) 24</p>

Michael J. Szczerba

Page 126	Page 128
<p>1 BY MR. NEUBERGER:</p> <p>2 Q. This Exhibit 15 consists of various</p> <p>3 certificates of educational certificates and things</p> <p>4 taken from Nancy Dietz's personnel file. Okay?</p> <p>5 Would you agree that she does attend</p> <p>6 seminars and things to enhance her police knowledge</p> <p>7 and skills?</p> <p>8 A. Yes.</p> <p>9 Q. These kinds of documents reflect that fact,</p> <p>10 don't they?</p> <p>11 A. Yes, they do.</p> <p>12 Q. So this top one is something put on by the</p> <p>13 New York State Police; right?</p> <p>14 A. Yes.</p> <p>15 Q. About investigating homicides; right?</p> <p>16 A. Yes.</p> <p>17 Q. And then the third one is about terrorist</p> <p>18 bombing awareness and things like that?</p> <p>19 A. Yes.</p> <p>20 Q. Next, managing police discipline within your</p> <p>21 department; right?</p> <p>22 A. Yes.</p> <p>23 Q. Then hostage negotiations, a couple seminars on</p> <p>24 that; correct?</p>	<p>1 Q. This first page here of Szczerba 16 is a</p> <p>2 commendation approved by then-Chief Dennis Regan. Do</p> <p>3 you see that?</p> <p>4 A. Yes.</p> <p>5 Q. This is a commendation to her and her partner</p> <p>6 while on patrol prevented a rape from occurring. Do</p> <p>7 you see that?</p> <p>8 A. Yes.</p> <p>9 Q. So this is 1982, so this would be like her</p> <p>10 second year on the force; right?</p> <p>11 A. Yes.</p> <p>12 Q. Then if we flip into the third page in, 1983,</p> <p>13 is this an award to Nancy Spell from Chief Regan at</p> <p>14 that time for resuscitating a 73-year-old man through</p> <p>15 CPR?</p> <p>16 A. Yes.</p> <p>17 Q. Who was dying on the streets?</p> <p>18 A. Yes.</p> <p>19 Q. If we turn to the next page, P180, this, again,</p> <p>20 is some documentation on that CPR incident; is that</p> <p>21 right?</p> <p>22 A. Right.</p> <p>23 Q. If we go to the next page, P200, are you aware</p> <p>24 that she was nominated on at least one occasion for</p>
Page 127	Page 129
<p>1 A. Correct.</p> <p>2 Q. And we could go on.</p> <p>3 Do these things demonstrate some of the</p> <p>4 qualities you've attributed to Nancy earlier?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let's go to another one.</p> <p>7 MR. NEUBERGER: Let's mark this as our next</p> <p>8 number, which would be 16.</p> <p>9 (Szczerba Exhibit 16 was marked for</p> <p>10 identification.)</p> <p>11 BY MR. NEUBERGER:</p> <p>12 Q. Nancy, before she got married, was known as</p> <p>13 Nancy Spell. Do you remember that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Patrolwoman Nancy Spell. Okay.</p> <p>16 Is it true that over her career she's</p> <p>17 received various written commendations?</p> <p>18 A. Yes.</p> <p>19 Q. That resume we looked at a few minutes ago had</p> <p>20 a second page with commendations and things like that.</p> <p>21 We can use that at another time, but these are just a</p> <p>22 few commendations I've pulled out of her personnel</p> <p>23 file. Okay?</p> <p>24 A. Yes.</p>	<p>1 the Kiwanis quarterly award for her accomplishments?</p> <p>2 A. No, I wasn't, but I'm aware by seeing the</p> <p>3 document here.</p> <p>4 Q. Is this a Wilmington Police Department</p> <p>5 document?</p> <p>6 A. Yes, it is.</p> <p>7 Q. This is a memo from a Then-Captain Robert</p> <p>8 Longyear to Inspector John Johnson; isn't that right?</p> <p>9 A. Yes.</p> <p>10 Q. It's dated November 24th, 1981; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. If we look at the second page of this document,</p> <p>13 the top, it says that Patrolman Spell has shown a</p> <p>14 great interest in improving herself by volunteering</p> <p>15 and attending various schools. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. So this was back in 1981 that she was</p> <p>18 demonstrating those qualities; right?</p> <p>19 A. Right.</p> <p>20 Q. Have you seen her demonstrate those qualities</p> <p>21 throughout her career --</p> <p>22 A. Yes, I have.</p> <p>23 Q. -- to be interested in getting more training to</p> <p>24 better her professional competence. Would you agree</p>

Michael J. Szczerba

Page 130	Page 132
<p>1 she does that?</p> <p>2 A. Yes, she does.</p> <p>3 Q. The second paragraph there indicates that back</p> <p>4 then that her supervisors in the Patrol Division felt</p> <p>5 that she had done tremendous work while working in the</p> <p>6 patrol division. Is that what it says?</p> <p>7 A. Yes.</p> <p>8 Q. And the next paragraph says that she has</p> <p>9 demonstrated extreme dedication to her police work.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Then the last paragraph recommends her to be</p> <p>13 the first woman ever to have received the Kiwanis</p> <p>14 award. So they were nominating her at this time. Do</p> <p>15 you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Then if we go to the third quarter of 1982, a</p> <p>18 year later, okay, from this 1981 document, we've got</p> <p>19 on page 183 another document. Does that appear to be</p> <p>20 a Wilmington Police Department document?</p> <p>21 A. Yes.</p> <p>22 Q. Does that indicate that she did get a Kiwanis</p> <p>23 award in the third quarter of 1982?</p> <p>24 A. Yes.</p>	<p>1 professionalism, and determination in executing her</p> <p>2 duties for the police academy?</p> <p>3 A. Yes, it does.</p> <p>4 Q. Does it call her an outstanding police officer</p> <p>5 there?</p> <p>6 A. Yes.</p> <p>7 Q. Does it thank her at the end for a job well</p> <p>8 done for that police academy?</p> <p>9 A. Yes.</p> <p>10 Q. Then the last page, this is a commendation for</p> <p>11 a 1996 incident where Nancy was off duty and rushed to</p> <p>12 the aid, to break up a robbery in progress and she was</p> <p>13 given the distinguished service award. Do you see</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. She got that from the director of public safety</p> <p>17 and she was commended by the chief; is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. All right. Let's go to another document here.</p> <p>20 MR. NEUBERGER: Let's mark this as Exhibit</p> <p>21 Number 17.</p> <p>22 (Szczerba Exhibit 17 was marked for</p> <p>23 identification.)</p> <p>24</p>
Page 131	Page 133
<p>1 Q. Does that reflect that from joining the force</p> <p>2 she had worked in the vice division, helped make</p> <p>3 undercover drug buys, help fight prostitution, act as</p> <p>4 a hostage negotiator?</p> <p>5 A. Yes.</p> <p>6 Q. Then at the last paragraph, does this</p> <p>7 Wilmington police document indicate that she displays</p> <p>8 initiative and dedication to her work?</p> <p>9 A. Yes.</p> <p>10 Q. Throughout her career, have you observed Nancy</p> <p>11 to display initiative and dedication to her work?</p> <p>12 A. Yes.</p> <p>13 Q. The next page is a memo from the director of</p> <p>14 personnel of the City of Wilmington in 1995 to</p> <p>15 then-Chief Pratcher. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. I think you told us that the lieutenants</p> <p>18 working in personnel under the captain have a lot of</p> <p>19 hands-on responsibility in the ongoing police</p> <p>20 academies?</p> <p>21 A. That's correct.</p> <p>22 Q. If we look at paragraph 3 of this memo, does it</p> <p>23 indicate from the director of personnel of the City of</p> <p>24 Wilmington that Nancy was demonstrating dedication,</p>	<p>1 BY MR. NEUBERGER:</p> <p>2 Q. This first page on Exhibit 17, is this a</p> <p>3 commendation from then-Mayor James Sills to</p> <p>4 then-Lieutenant Nancy Dietz?</p> <p>5 A. Yes, it is.</p> <p>6 Q. The next page, is that, again, a commendation</p> <p>7 to her from Mayor Sills of a different date?</p> <p>8 A. Yes.</p> <p>9 Q. And the third page in is an award signed by</p> <p>10 Mayor James M. Baker to Nancy dated February 13th,</p> <p>11 2003?</p> <p>12 A. Yes.</p> <p>13 Q. Does that evidence the kind of community</p> <p>14 service you mentioned earlier that Nancy engages in?</p> <p>15 A. Yes, it is.</p> <p>16 Q. This is for her work with the Big Brothers/Big</p> <p>17 Sisters program; right?</p> <p>18 A. That's correct.</p> <p>19 MS. BUTCHER: I think it's February 10th.</p> <p>20 I think.</p> <p>21 MR. NEUBERGER: Did I misstate the date?</p> <p>22 MS. BUTCHER: Yes.</p> <p>23 MR. NEUBERGER: I apologize.</p> <p>24</p>

Michael J. Szczerba

<p style="text-align: right;">Page 134</p> <p>1 BY MR. NEUBERGER:</p> <p>2 Q. February 10th, 2003, she got this award; right?</p> <p>3 A. Yes.</p> <p>4 Q. This is from Mayor Baker; right?</p> <p>5 A. Yes.</p> <p>6 Q. Does Mayor Baker want police officers to be</p> <p>7 involved in community activities with children?</p> <p>8 MS. CHEEK: Objection to form.</p> <p>9 A. Yes, he does.</p> <p>10 Q. Have you seen him give those kinds of</p> <p>11 directions?</p> <p>12 A. Yes.</p> <p>13 Q. Does Mayor Baker want police officers to be</p> <p>14 involved with kids?</p> <p>15 A. Yes.</p> <p>16 MS. BUTCHER: Object as to form.</p> <p>17 Q. Has he told you that?</p> <p>18 A. In recognizing people being involved with Big</p> <p>19 Brothers/Big Sisters in a mentoring program, yes, I've</p> <p>20 heard him publicly state that.</p> <p>21 Q. You've heard him publicly state that?</p> <p>22 A. Yes.</p> <p>23 Q. Mayor Baker lives in the city, doesn't he?</p> <p>24 MS. BUTCHER: Object as to form.</p>	<p style="text-align: right;">Page 136</p> <p>1 A. Yes.</p> <p>2 Q. Did Mayor Baker ever tell you he disapproved of</p> <p>3 those activities by Nancy Dietz?</p> <p>4 A. No.</p> <p>5 Q. You've heard him speak on Wilmington police</p> <p>6 officers being involved with the community?</p> <p>7 A. Yes, and city employees, in general, being</p> <p>8 involved in the community and, in particular, I know</p> <p>9 this program from meeting the little sisters. She's</p> <p>10 involved with city children, now some of them city</p> <p>11 adults.</p> <p>12 So it's a very important community outreach</p> <p>13 just the same as we have officers involved in coaching</p> <p>14 athletics. Whether they are a resident or not, they</p> <p>15 are still active here in the city, active in their</p> <p>16 churches. That's all important because it presents</p> <p>17 the department in a very positive light.</p> <p>18 Q. Are you aware of whether Gilbert Howell is</p> <p>19 involved in Big Brothers/Big Sisters?</p> <p>20 A. No, I am not aware.</p> <p>21 Q. You don't know one way or the other?</p> <p>22 A. Right.</p> <p>23 Q. Do you have any idea what kind of community</p> <p>24 activities Gilbert Howell is involved in?</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Yes.</p> <p>2 Q. Does the mayor have to meet a residency</p> <p>3 requirement, do you know?</p> <p>4 A. Yes, he does, as elected official.</p> <p>5 Q. He lives down around Adams Street, somewhere</p> <p>6 like that?</p> <p>7 MS. BUTCHER: Object as to form.</p> <p>8 Q. Are you aware that he lives on that side of 95?</p> <p>9 A. No. It would be actually the other side of 95,</p> <p>10 but in that vicinity.</p> <p>11 Q. On the other side of 95?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Let's look at the next page, June 4th,</p> <p>14 2001, Mayor Baker again gave Nancy Dietz an award for</p> <p>15 her outstanding performance, dedication, and</p> <p>16 contribution to the Big Brothers/Big Sisters program;</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. So twice he signed an award to her indicating</p> <p>20 that she was dedicated to the Big Brothers/Big Sisters</p> <p>21 program?</p> <p>22 MS. CHEEK: Objection to form.</p> <p>23 A. Yes.</p> <p>24 Q. Do you see these two documents here?</p>	<p style="text-align: right;">Page 137</p> <p>1 A. In particular, I'm not aware of any.</p> <p>2 Q. So you're not aware of any community activities</p> <p>3 he's involved in?</p> <p>4 A. Right, right, not that I'm aware of that's been</p> <p>5 brought to my attention.</p> <p>6 Q. Right.</p> <p>7 A. But it's a possibility he could be, but that</p> <p>8 I'm not aware of.</p> <p>9 Q. Lastly, the last page here is a 1994</p> <p>10 commendation from the city council to a police officer</p> <p>11 and a fire department officer that also mentions Nancy</p> <p>12 Dietz. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. It mentions her being injured in a scuffle</p> <p>15 trying to arrest a thief. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. We are done with that.</p> <p>18 MR. NEUBERGER: Here is 18.</p> <p>19 (Szczerba Exhibit 18 was marked for</p> <p>20 identification.)</p> <p>21 BY MR. NEUBERGER:</p> <p>22 Q. Is this a letter to the chief of police in 1989</p> <p>23 from Peter Letang, a deputy attorney general at the</p> <p>24 time?</p>

Michael J. Szczerba

Page 138	Page 140
<p>1 A. Yes.</p> <p>2 Q. Does this letter commend then-Detective Nancy</p> <p>3 Dietz for her aid in solving, to use a vernacular, a</p> <p>4 rape charge?</p> <p>5 A. Yes.</p> <p>6 Q. At the end does he say that he appreciated her</p> <p>7 professional assistance in seeing that this</p> <p>8 perpetrator was convicted and is awaiting sentencing</p> <p>9 for crimes that could exceed 110 years?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Thank you.</p> <p>12 MR. NEUBERGER: Let's just mark this as</p> <p>13 Exhibit 19.</p> <p>14 (Szczerba Exhibit 19 was marked for</p> <p>15 identification.)</p> <p>16 BY MR. NEUBERGER:</p> <p>17 Q. Now what I've done is I've put a whole</p> <p>18 compilation of Nancy Dietz's Employee Performance</p> <p>19 Appraisals in front of you. Okay? The first one</p> <p>20 we've already talked about, so let's just turn in to</p> <p>21 page P282. This is the performance appraisal for the</p> <p>22 year before September 2004, which was the last</p> <p>23 performance appraisal before Gilbert Howell was</p> <p>24 selected. Okay? So this is performance appraisal</p>	<p>1 Gilbert Howell has an excellent disciplinary record?</p> <p>2 Did you ever hear anybody say that?</p> <p>3 A. I don't have any recall.</p> <p>4 Q. Have you ever seen a document that you recall</p> <p>5 that said that Gilbert Howell has an excellent</p> <p>6 disciplinary record?</p> <p>7 A. I don't recall.</p> <p>8 Q. Has anyone ever told you verbally that Gilbert</p> <p>9 Howell maintains high ethical and professional</p> <p>10 standards?</p> <p>11 A. No.</p> <p>12 Q. Have you ever seen a written document that</p> <p>13 states that Gilbert Howell maintains high ethical and</p> <p>14 professional standards?</p> <p>15 A. No.</p> <p>16 Q. Now, if we go on to page P296 of this document,</p> <p>17 for the overall ratings, is it true that Nancy Dietz</p> <p>18 received a rating here again of above expectations?</p> <p>19 A. Yes.</p> <p>20 Q. Page 299, we've already gone over that</p> <p>21 document.</p> <p>22 Let's go to page P306, a 1996 document.</p> <p>23 Okay?</p> <p>24 A. Okay.</p>
Page 139	Page 141
<p>1 dated September 2003. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. If we go back to page 286 on this document, do</p> <p>4 you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Is it true that at that time in September of</p> <p>7 2003 she received the second highest rating of above</p> <p>8 expectations?</p> <p>9 A. Correct.</p> <p>10 Q. If we go to the next document we have,</p> <p>11 page P287, do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. That's for the year before that with a review</p> <p>14 in August of 2002; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. If we stop at page 292, is it correct that our</p> <p>17 evaluator under "Results" stated that "Captain Dietz</p> <p>18 has an excellent disciplinary record, and has managed</p> <p>19 high ethical and professional standards"?</p> <p>20 A. Yes. She has "maintained" high --</p> <p>21 Q. That's right. "...maintained high ethical and</p> <p>22 professional standards"; right?</p> <p>23 A. Yes.</p> <p>24 Q. Are you aware of anyone ever saying that</p>	<p>1 Q. Is this a January 12, 1996, job performance</p> <p>2 evaluation for then-Lieutenant Nancy Dietz?</p> <p>3 A. Yes.</p> <p>4 Q. The rating system here is still a five-point</p> <p>5 rating system; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. The highest rating is superior. That's a 5;</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. Then the next rating is a 4; right?</p> <p>11 A. Yes.</p> <p>12 Q. Then the next is a 3; right?</p> <p>13 A. Yes.</p> <p>14 Q. And you have a 2 and then a 1; right?</p> <p>15 A. Yes.</p> <p>16 Q. So 1 would be the flunk; right?</p> <p>17 A. Yes.</p> <p>18 Q. And 2 would be a D; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. And 3 would be a C; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. A 4 would be a B; right?</p> <p>23 A. Yes.</p> <p>24 Q. And then 5 would be an A; right?</p>

36 (Pages 138 to 141)

Michael J. Szczerba

Page 142	Page 144
<p>1 A. Right.</p> <p>2 Q. So let's just look at some of the comments</p> <p>3 here.</p> <p>4 On the "Comments" section, do you see the</p> <p>5 right-hand side of the page?</p> <p>6 A. Yes.</p> <p>7 Q. There's comments. In the left-hand side is the</p> <p>8 job task; right?</p> <p>9 A. Right.</p> <p>10 Q. So for the first job task which consisted of</p> <p>11 40 percent of the ratings, Nancy received the second</p> <p>12 highest rating of a 4; is that right?</p> <p>13 A. That's right.</p> <p>14 Q. Then for the second job task, again for</p> <p>15 30 percent of the rating she received the second</p> <p>16 highest of a 4; right?</p> <p>17 A. Yes.</p> <p>18 Q. The third job task, 15 percent of the rating</p> <p>19 she received the highest rating, a 5; right?</p> <p>20 A. Correct.</p> <p>21 Q. The fourth job task, 7 and a half percent of</p> <p>22 the rating, she received a C, a 3; right?</p> <p>23 A. Yes.</p> <p>24 Q. And for the last task 7 and a half percent of</p>	<p>1 Q. If we go to page P311, that job evaluation was</p> <p>2 done by a Captain Monaghan; is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Then the police chief who signed off on it was</p> <p>5 Guy Sapp; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Then I don't remember who the director of</p> <p>8 public safety was back then. Can you read the name?</p> <p>9 A. Yes. It's Karen Johnson.</p> <p>10 Q. Karen Johnson?</p> <p>11 A. Yes, yes. The late Karen Johnson.</p> <p>12 Q. Yes. Okay.</p> <p>13 A. And also there's the initials of the inspector,</p> <p>14 SDP. That's Samuel D. Pratcher.</p> <p>15 Q. So former Chief Pratcher was inspector then?</p> <p>16 A. Yes.</p> <p>17 Q. Now, the next page, P312, we have some job</p> <p>18 evaluations there. If you look at the second page on</p> <p>19 P313, this is an evaluation done by then-Lieutenant</p> <p>20 Gilbert Howell; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. This was on September 6, 1990; right?</p> <p>23 A. Yes.</p> <p>24 Q. The first question he was asked to answer there</p>
Page 143	Page 145
<p>1 the rating she received a second highest rating again;</p> <p>2 right?</p> <p>3 A. Right.</p> <p>4 Q. Then we go back to 1991. Let's look at</p> <p>5 page P308. Is this an evaluation job performance</p> <p>6 evaluation for Nancy Dietz in September 25th of 1992?</p> <p>7 Do you see that in the right-hand column, the first</p> <p>8 page?</p> <p>9 A. Yes, yes.</p> <p>10 Q. Just looking at job tasks and comments again</p> <p>11 here, under the first job task, which was 60 percent,</p> <p>12 she received the absolute highest rating of a 5; is</p> <p>13 that right?</p> <p>14 A. Yes.</p> <p>15 Q. Then for the next job task, 15 percent, she</p> <p>16 received the highest rating of a 5?</p> <p>17 A. Yes.</p> <p>18 Q. In fact, we go to the next page, for all the</p> <p>19 job tasks she received the absolute highest rating of</p> <p>20 a 5; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. That's when she was the rank of lieutenant; is</p> <p>23 that correct?</p> <p>24 A. Correct.</p>	<p>1 was: "Does she use good judgment in making</p> <p>2 decisions?" And what did he respond? Yes?</p> <p>3 A. Yes.</p> <p>4 Q. She was asked if she was courteous to the</p> <p>5 public in question 27, and what did he respond?</p> <p>6 A. "Yes."</p> <p>7 Q. And question number 36 he was asked: "Has she</p> <p>8 gained the respect of her subordinates?" And his</p> <p>9 response was --</p> <p>10 A. "Yes."</p> <p>11 Q. Then there's some text at the bottom of that</p> <p>12 page before his signature. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Does he indicate there that she is very much</p> <p>15 qualified --</p> <p>16 A. Yes.</p> <p>17 Q. -- to fulfill her position?</p> <p>18 A. Yes.</p> <p>19 MS. CHEEK: I'd like to note for the record</p> <p>20 it appears that a page is missing.</p> <p>21 MR. NEUBERGER: Yes, it does.</p> <p>22 BY MR. NEUBERGER:</p> <p>23 Q. If we go to the next page, page 315 through</p> <p>24 P316, there's a page missing again here and hopefully</p>

37 (Pages 142 to 145)

Michael J. Szczerba

Page 146	Page 148
<p>1 we can get it from the city.</p> <p>2 But this is, again, an evaluation done of</p> <p>3 Gilbert Howell, of then-Lieutenant Howell of Nancy</p> <p>4 Dietz; right?</p> <p>5 A. Yes.</p> <p>6 Q. Again, he says she uses good judgment in making</p> <p>7 decisions in number 1; right?</p> <p>8 A. Yes.</p> <p>9 Q. 27 says she's courteous to the public?</p> <p>10 A. Yes.</p> <p>11 Q. In 33 he says she's loyal?</p> <p>12 A. Yes.</p> <p>13 Q. Let's look at his handwritten text at the</p> <p>14 bottom there. You see four lines of text?</p> <p>15 A. Yes.</p> <p>16 Q. Is it true he says: "Sergeant Dietz sets a</p> <p>17 fine example in all aspects of police supervision"?</p> <p>18 A. Yes.</p> <p>19 Q. Does he conclude that she is "a very noteworthy</p> <p>20 asset to our department"?</p> <p>21 A. Yes.</p> <p>22 Q. Is that what he said at that time?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. We are done with that.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 PAGES 149 TO 181 OF THIS TRANSCRIPT</p> <p>9</p> <p>10 HAVE BEEN DEEMED TO BE CONFIDENTIAL</p> <p>11</p> <p>12 BY THE PARTIES AND CAN BE FOUND IN A</p> <p>13</p> <p>14 SEALED ENVELOPE AT END OF THIS</p> <p>15</p> <p>16 TRANSCRIPT.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 147	Page 149
<p>1 MR. NEUBERGER: Why don't we take our lunch</p> <p>2 break now?</p> <p>3 MS. CHEEK: All right.</p> <p>4 MR. NEUBERGER: Why don't we just come back</p> <p>5 at 1:30. It is 12:15 now, we'll take an hour and 15</p> <p>6 for lunch.</p> <p>7 MS. CHEEK: Okay.</p> <p>8 (A luncheon recess was taken at this time.)</p> <p>9 -----</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

38 (Pages 146 to 149)

**SEALED
DOCUMENTS
(A1296 - 1303)**

Michael J. Szczerba

Page 182	Page 184
<p>1 BY MR. NEUBERGER:</p> <p>2 Q. Did you ever receive a complaint from the FOP</p> <p>3 about Inspector Howell being on the scene, on a</p> <p>4 homicide scene without his gun belt, his hat, those</p> <p>5 kinds of things?</p> <p>6 A. Yes.</p> <p>7 Q. What year would that have been?</p> <p>8 A. 2006.</p> <p>9 Q. 2006?</p> <p>10 A. Yes.</p> <p>11 Q. Was that something that was investigated?</p> <p>12 A. No. It was an issue where the FOP president</p> <p>13 expressed that. I arranged for Inspector Howell to</p> <p>14 meet with the FOP president on that issue and that's</p> <p>15 where it ended there.</p> <p>16 Q. As the chief, you sign the pay sheets for</p> <p>17 Inspector Howell every couple of weeks?</p> <p>18 A. Yes.</p> <p>19 Q. Right? So that makes you aware of what his</p> <p>20 status is as far as attendance and things like that?</p> <p>21 That's one way of letting you know; right?</p> <p>22 A. Yes.</p> <p>23 Q. Are you aware that on occasions when he's been</p> <p>24 out on sick time or comp. time or vacation, that he</p>	<p>1 Were you aware of Director Mosley ever</p> <p>2 checking up on Gilbert Howell and going to his house</p> <p>3 to check in when he was supposedly off sick?</p> <p>4 A. No.</p> <p>5 Q. Do you know what DEMA is?</p> <p>6 A. DEMA, Delaware Emergency Management Agency.</p> <p>7 Q. Did they conduct an exercise in the City of</p> <p>8 Wilmington and Inspector Howell failed to take command</p> <p>9 of the scene as the incident commanded?</p> <p>10 A. That was part of the criticisms that he</p> <p>11 received after that drill.</p> <p>12 Q. So they ran a drill in Wilmington?</p> <p>13 A. Yes.</p> <p>14 Q. As part of a trial to keep the State of</p> <p>15 Delaware prepared for emergencies?</p> <p>16 A. Right.</p> <p>17 Q. Inspector Howell was supposed to be part of</p> <p>18 that drill?</p> <p>19 A. Yes.</p> <p>20 Q. This is designed to enhance the public safety</p> <p>21 in case of a tragedy; right?</p> <p>22 A. Right. Also in a, you know, a test function to</p> <p>23 show us where maybe we're lacking.</p> <p>24 Q. Inspector Howell didn't show up for the scene</p>
Page 183	Page 185
<p>1 has, nevertheless, worked extra-duty jobs? Are you</p> <p>2 aware of that ever happening?</p> <p>3 A. No.</p> <p>4 Q. No?</p> <p>5 A. Prior to knocking off sick and working jobs,</p> <p>6 yes, but not while working while on a sick status.</p> <p>7 Q. Not being in the department, I didn't quite</p> <p>8 follow that. Could you tell me that again? You said</p> <p>9 prior to -- try that again.</p> <p>10 A. I'm not aware of any allegations of working</p> <p>11 while you're out sick and then working a job.</p> <p>12 Q. Okay.</p> <p>13 A. Maybe prior to knocking off sick, working a</p> <p>14 function and then knocking off sick afterwards.</p> <p>15 Q. Okay.</p> <p>16 A. So the way I understood your question was that</p> <p>17 he was off sick and he's working.</p> <p>18 Q. So you're saying he could have been working and</p> <p>19 then done an extra-duty job and then he would be off</p> <p>20 sick?</p> <p>21 A. Yes.</p> <p>22 Q. But not the other way around?</p> <p>23 A. Right.</p> <p>24 Q. Got you.</p>	<p>1 or the incident practice?</p> <p>2 A. He was there.</p> <p>3 Q. He didn't take command of the scene as he</p> <p>4 should have?</p> <p>5 A. That was some of the criticism we received, not</p> <p>6 in particular to him, but he was at the scene, so it</p> <p>7 was part of his responsibilities. But we received</p> <p>8 other criticisms in addition to that.</p> <p>9 Q. Right. I understand. They are trying to make</p> <p>10 it ready in all respects; right?</p> <p>11 A. Right. So exclusively to put that, you know,</p> <p>12 saying there was a direct criticism of only Inspector</p> <p>13 Howell, it wouldn't be part. He was part of it</p> <p>14 including myself and everyone else that participated</p> <p>15 in that.</p> <p>16 Q. Right. But on the scene he was the person</p> <p>17 highest in command?</p> <p>18 A. Yes.</p> <p>19 Q. He did not take command of the scene during the</p> <p>20 exercise?</p> <p>21 A. Right.</p> <p>22 Q. That's what they claimed?</p> <p>23 A. Yes.</p> <p>24 Q. As a result, was all of your staff required to</p>

47 (Pages 182 to 185)

Michael J. Szczerba

<p style="text-align: right;">Page 186</p> <p>1 take some training because he didn't take command of 2 the scene? 3 A. Yes, in the after-action report. 4 Q. Did Gilbert Howell fail to show up for three of 5 the training sessions that were scheduled? 6 A. That I could not state as far as his 7 attendance. I'm not aware of that. 8 Q. Now, his performance since his promotion to 9 inspector, have you sat down with Director Mosley and 10 talked about any issues you might have with Inspector 11 Howell's performance? 12 MS. BUTCHER: Object as to form. 13 A. Yes. We have spoken about it, but mainly it 14 revolved around his presence or his lack of his 15 presence. So that has been the main issue. 16 Q. Has all this been verbal? 17 A. Verbal. 18 Q. Meetings? 19 A. In addition to what you've seen submitted in 20 the Executive Summary, the reports that are entitled 21 "Executive Summary," that's the purpose of that 22 because that's been the issue. 23 Q. That's been the issue? 24 A. Yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. After you told the chief of staff, Montgomery, 2 about the attendance issue, what did he respond to 3 you? 4 MS. BUTCHER: Object as to form. 5 A. There really hasn't been a response. Most of 6 the conversation has been between myself and the 7 director. 8 Q. But when you've mentioned it to Mr. Montgomery, 9 he hasn't given you a response is what you are telling 10 me? 11 A. No, no. 12 Q. Right? 13 A. Right. There's only been one time where we 14 have officially sat down and discussed it. There's 15 been other times in passing, but I do recall one 16 meeting between myself, the director, and 17 Mr. Montgomery. 18 Q. Was the purpose of that meeting to discuss 19 Gilbert Howell? 20 A. That was one of the topics. The others were 21 unrelated, but that was mentioned. 22 Q. You brought up this problem of how it was 23 affecting your staffing? 24 A. Yes, yes, I did. I want to explain, too, that</p>
<p style="text-align: right;">Page 187</p> <p>1 Q. Okay. 2 A. Yes. 3 Q. Have you had those kinds of discussions with 4 the chief of staff of the mayor, Mr. Montgomery, or 5 the mayor himself? 6 A. Not with the mayor himself in passing, not any 7 official meeting. But it's been mentioned and talked 8 about with the chief of staff. 9 Q. So what kinds of things would you have told the 10 chief of staff? 11 A. That we are challenged with the attendance of 12 Inspector Howell. It continues to be an issue. 13 Q. How does Inspector Howell relate as to the 14 other inspector? 15 MS. BUTCHER: Object as to form. 16 Q. Or do they have any overlap that you observe? 17 A. They have overlap, but it revolves back to the 18 issue of being there. 19 Q. If you are not there, you can't relate to 20 somebody? 21 A. Right. 22 Q. Okay. 23 A. But I haven't had any problems between the two 24 when they are both there.</p>	<p style="text-align: right;">Page 189</p> <p>1 there are monthly meetings with the chief of staff and 2 every department head. 3 Q. All in one table or separate meetings? 4 A. Separate meetings. 5 Q. Go ahead. 6 A. He has monthlies with the department heads. 7 Myself and the chief of fire are not included in those 8 monthlies. So every other department director has a 9 monthly meeting. We do not. 10 So I want to clear that up in case that 11 would become an issue, don't you meet with your chief 12 of staff. No, I don't. I guess it's with the chief 13 of staff meeting with the director, it covers for 14 other departments. 15 Q. Okay. I understand. 16 Have you asked the other inspector to 17 assume some of the duties of Inspector Howell because 18 he's not there? 19 A. Asked him, no. The other inspector has stepped 20 up when needed and so has the other members of my 21 senior staff which I consider the ranks of captain and 22 above. They've stepped up to... 23 Q. I seem to remember from other depositions long 24 ago a little bit about the chief having command</p>

Michael J. Szczerba

Page 190	Page 192
<p>1 meetings or whatever. Let's call it your senior staff 2 is -- what? Your captains and up? 3 A. Yes. 4 Q. How frequently do you have meetings with your 5 senior staff since you've been the chief? 6 A. At least weekly. 7 Q. I remember some big conference room in your new 8 building. 9 A. Yes. 10 Q. You have meetings at least weekly with all 11 those commanders? 12 A. Yes. 13 Q. You're saying that, as need be, Inspector 14 Donohue has stepped up to help fill the gap, as 15 necessary? 16 A. And so have the captains. 17 Q. And so have the captains. Okay. 18 Have problems arisen with paperwork not 19 being processed in a timely fashion because he's not 20 there? 21 A. Yes, that's an issue, also. But again, it's 22 all about being there. 23 Q. So, for example, people can put in for 24 transfers or retirements or things like that and it's</p>	<p>1 yes, has he pulled through? Yes. But like I stated 2 earlier, so have the other captains. 3 Q. Got you. Okay. 4 Have you discussed any problems with 5 failing to timely move paperwork with the director? 6 A. No, I haven't. It may have been an issue maybe 7 a couple times with training issues looking for 8 paperwork, but I haven't discussed it. Mainly, again, 9 centered on the attendance. 10 Q. Have you discussed the failure to timely move 11 paperwork with Mr. Montgomery? 12 A. No. 13 Q. Concerning the attendance issues caused by 14 Inspector Howell, has Mr. Montgomery -- I want to see 15 if this jogs your memory -- has he ever advised you to 16 just simply have the rest of the staff pick up the 17 slack? Has he ever told you that? 18 MS. BUTCHER: Object as to form. 19 A. That was -- I do recall that. And that 20 actually was stated prior to the official appointment 21 of Inspector Howell when I was discussing the issues 22 that I possibly could be facing. And looking at, 23 well, does he have other people pick up, I said it 24 wouldn't be a matter of picking up, it's a matter of</p>
Page 191	Page 193
<p>1 not getting pushed up the chain of command if he's not 2 there? 3 A. That's correct. 4 Q. How does that kind of a thing transfer to 5 requests not being timely forwarded or retirements or 6 resignations impact on the operations of the 7 Wilmington Police Department? 8 A. It does impact upon it, but something as urgent 9 as that, I would assign that to go through the mail or 10 the departmental paperwork to go through and pull that 11 out. However, some things, it could cause a delay in 12 someone putting in for a training that we have 13 requirements within the city to put in for the 14 expenses for that, and so you may have a time window 15 of ten days where you are not going to get within 16 that, so it could possibly deny someone from going to 17 training, or maybe not denial, but it would delay 18 paperwork where they would have to get reimbursement 19 instead of being paid up front. 20 Q. Is there a Captain Cummings who is doing some 21 of his paperwork? Is there a Captain Cummings? 22 A. Yes, there's Captain Cummings. He's the 23 commanding officer of Support Services Division which 24 falls under inspector of Uniform Operations. And,</p>	<p>1 him being there in anticipation that everybody knew 2 what the attendance record was in the previous years 3 prior to that appointment and pretty much left it at 4 that. 5 Q. I am going to follow up on that. I want to 6 address how the appointment or the selection of 7 Inspector Howell came about and any meetings you had 8 with Mr. Montgomery, any meetings you had with the 9 mayor. Okay? And your recollection of those events. 10 Okay? 11 But I think you are telling me that at some 12 time prior to the elevation of Inspector Howell, the 13 possible impact on the operations of the police 14 department was discussed because of concerns you had 15 about his attendance record? 16 A. Concerns I had about his attendance, concerns I 17 had about his capacity to be able to handle that 18 assignment, knowing firsthand the pressure and the 19 stress that's brought upon in a position such as that. 20 You know, I expressed that. 21 Q. In response to my question, I think you were 22 saying that Mr. Montgomery replied, in effect, that if 23 those kinds of problems arose, the rest of the staff 24 could pick up the slack?</p>

Michael J. Szczerba

Page 194	Page 196
<p>1 A. Possibly.</p> <p>2 MS. BUTCHER: Object to form.</p> <p>3 MR. NEUBERGER: Counsel, I don't know what</p> <p>4 you mean. I'm asking a question. He's the manager</p> <p>5 and I keep asking leading questions or whatever. What</p> <p>6 is your objection that I can correct it, the supposed</p> <p>7 objection you think there was to my asking of him?</p> <p>8 MS. BUTCHER: Because you ask him a</p> <p>9 question and then he answers a question, then you take</p> <p>10 his answer and recharacterize it and you ask it to him</p> <p>11 again. You've either covered the ground or you're</p> <p>12 restating things and putting words into his mouth.</p> <p>13 MR. NEUBERGER: You think that's asked and</p> <p>14 answered or something?</p> <p>15 MS. BUTCHER: Yes.</p> <p>16 MR. NEUBERGER: Now at least I have an</p> <p>17 idea.</p> <p>18 Can you read the question back, please?</p> <p>19 (The reporter read from the record as</p> <p>20 requested.)</p> <p>21 BY MR. NEUBERGER:</p> <p>22 Q. What do you recall him saying about the slack?</p> <p>23 A. The captains under his command would be able to</p> <p>24 pick it up.</p>	<p>1 meeting. I remember this was out on the street in a</p> <p>2 discussion with Mr. Montgomery. There was -- that</p> <p>3 was -- that followed a meeting where one morning I met</p> <p>4 at a breakfast meeting with the county leadership,</p> <p>5 account executive and his staff. I believe they</p> <p>6 routinely meet maybe about once a month, the county</p> <p>7 leadership and the city leadership at the breakfast</p> <p>8 meeting. And that was after that breakfast meeting.</p> <p>9 But that breakfast meeting wasn't geared towards the</p> <p>10 pending appointment of Inspector Howell. You know, it</p> <p>11 covered many different topics. And we had a</p> <p>12 discussion after that.</p> <p>13 Q. Maybe just laying the foundation for all this,</p> <p>14 how many times did you speak with the mayor prior to</p> <p>15 the selection of Gilbert Howell to discuss the pool of</p> <p>16 people for that?</p> <p>17 A. I recall twice.</p> <p>18 Q. Twice with the mayor. Okay.</p> <p>19 A. That the mayor was present. It wasn't just</p> <p>20 one-on-one with me and the mayor.</p> <p>21 Q. No. I understand.</p> <p>22 On both those occasions, was Mr. Montgomery</p> <p>23 available? Did he attend the discussion, also?</p> <p>24 A. I believe so.</p>
Page 195	Page 197
<p>1 Q. So you recall him saying something to the</p> <p>2 effect of if he's absent, the rest of the captains</p> <p>3 under you, the chief's command, could pick up the</p> <p>4 slack?</p> <p>5 A. I don't think it was -- I -- my take on that is</p> <p>6 I don't think he was gearing that towards attendance.</p> <p>7 He was gearing him towards him having the capacity</p> <p>8 while he is there to be able to handle those duties.</p> <p>9 Q. So you had said, you talked to him about</p> <p>10 attendance and also capacity to handle the assignment</p> <p>11 I think is what you said?</p> <p>12 A. Yes.</p> <p>13 Q. So you're saying that during the discussion of</p> <p>14 then-Captain Howell's capacity to handle the</p> <p>15 assignment as an inspector, Mr. Montgomery made some</p> <p>16 sort of comment about other captains would have the</p> <p>17 ability to fill in the gaps of any lack of capacity on</p> <p>18 his part?</p> <p>19 A. Right.</p> <p>20 Q. Right. Okay. Okay.</p> <p>21 Was this meeting with Mr. Montgomery</p> <p>22 separate from any meeting you might have had with the</p> <p>23 mayor to discuss the filling of this vacancy?</p> <p>24 A. Yes. This didn't occur at the official</p>	<p>1 Q. So you were present with the mayor on two</p> <p>2 occasions to discuss the selection?</p> <p>3 A. Yes.</p> <p>4 Q. And Mr. Montgomery was present on both those</p> <p>5 occasions?</p> <p>6 A. Yes.</p> <p>7 Q. Was anybody else present on those two</p> <p>8 occasions?</p> <p>9 A. I believe the director of public safety was</p> <p>10 there on both occasions.</p> <p>11 Q. Okay. So he was there both times. Okay.</p> <p>12 Was anybody else present?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Were any notes or records made of that meeting?</p> <p>15 A. Not that I recall. I don't believe so.</p> <p>16 Q. No recording was made of that meeting that you</p> <p>17 are aware of?</p> <p>18 A. No.</p> <p>19 Q. Aside from those two meetings there, did you</p> <p>20 ever have any meetings or discussions or conversations</p> <p>21 with Mr. Montgomery outside of those two meetings?</p> <p>22 A. No.</p> <p>23 Q. I think you sort of said after this monthly</p> <p>24 breakfast meeting with the county leadership?</p>

50 (Pages 194 to 197)

Michael J. Szczerba

Page 198	Page 200
<p>1 A. Right, that was one time where all four people 2 would have been present, including myself, the mayor, 3 the director, and chief of staff, Mr. Montgomery. 4 The other time would have been after a 5 meeting in the mayor's office where it was -- may have 6 been a monthly update. I do a monthly update with the 7 mayor in regards crime issues. And after that meeting 8 was terminated, we had another meeting after that to 9 discuss the pending promotion. 10 Q. So those are the two times? 11 A. Yes. 12 Q. So these would have been prior to that November 13 2005 announcement of the selection of Gilbert Howell? 14 A. Yes. 15 Q. Would they have been in 30 days beforehand or 16 six months beforehand? 17 A. Thirty days would be safe. 18 Q. So the two meetings were in that 30-day time 19 period? 20 A. Yes, yes. And I believe there were meetings 21 that I wasn't present at maybe between then-Captain 22 Howell and the mayor and the director, but I cannot 23 speak on that because I wasn't invited to those 24 meetings or could not tell you how many, there was</p>	<p>1 them, the two meetings of the three of them with you, 2 this conversation with Mr. Montgomery, were there any 3 other conversations you had with the public safety 4 director about filling the inspector spot? 5 A. There would have been, but not an official 6 meeting. Just me expressing my concern over that 7 appointment. But not an official, scheduled meeting 8 that it would make it to my calendar. Just in 9 passing. 10 Q. I understand. 11 When did you learn that Wright was going to 12 retire? 13 A. I'm guesstimating. I'm not sure of the exact 14 date. I guess it would be in September '05. 15 Q. Sometime in the fall there, and then in 16 November the slot is filled? 17 A. Yes. Or late October the slot was filled. 18 Q. Late October. Okay. 19 Are you saying that once you realized that 20 that slot had to be filled, you did an inventory and 21 evaluation of the people under your command who would 22 be able to do that job? 23 A. Yes, but it's -- you know, that inventory 24 didn't start upon the announcement of Inspector</p>
Page 199	Page 201
<p>1 only one or how many meetings there were. 2 Q. But is your impression that the mayor and the 3 director, either jointly or separately, would have 4 spoken to Captain Howell? 5 A. Yeah. Once I was advised that Captain Howell 6 was going to be the appointment for the inspector 7 spot, I was out of the conversation at that point and 8 it was handled either directly with the mayor or 9 directly with the director of public safety. 10 Q. Aside from those two meetings where the mayor 11 was there and the director of public safety was there, 12 Mr. Montgomery was there, was there another occasion 13 when you had a conversation with Montgomery? I want 14 to make sure I understand that. 15 A. Yes. That would have been a street 16 conversation in passing -- 17 Q. Okay. 18 A. -- after that meeting with New Castle County. 19 Q. Yes. 20 Do you have any idea what the date of that 21 meeting was with New Castle County? 22 A. No, no, I do not. I believe possibly at the 23 end of September '05. I'm not sure of the exact date. 24 Q. Were there, besides the meeting of the three of</p>	<p>1 Wright's retirement. I'm always thinking of staff 2 replacements and the next move they could make in 3 doing some strategic planning. So I already had that 4 in mind. 5 You know, getting back to if there were any 6 other conversations, it started with when the 7 retirement of Inspector Wright was already announced, 8 the director coming to me, you know, advising me that 9 this time it would be different, that this is the 10 mayor's appointment and he wants to make that clear. 11 Q. So you're saying -- 12 A. Director. 13 Q. -- the director was, when this conversation 14 started, he relayed to you that the mayor wanted it to 15 be made clear that he would be the person making the 16 selection and not you? 17 A. Yes. 18 Q. That message was relayed to you from the 19 director -- 20 A. Yes. 21 Q. -- from the mayor's office? 22 A. He was taking -- that's the way he was advised 23 by the mayor. 24 Q. So the director indicated to you that the mayor</p>

51 (Pages 198 to 201)

Michael J. Szczerba

Page 202	Page 204
<p>1 advised him that he would be making the selection, not 2 you? 3 A. Right. 4 Q. At that time did you start identifying for him 5 problems that you foresaw if it was Gilbert Howell? 6 A. No, I did not. I just asked a question, well, 7 will I be able to make a recommendation? I was told 8 that I can do what I wanted to, but the mayor would be 9 making the decision. 10 Q. You decided you would make a recommendation? 11 A. Yes, I did. 12 Q. When Inspector Wright was selected in 2001, 13 let's go back to him, the mayor takes office the 14 beginning of January in 2001, it's announced that you 15 are going to be the chief when he's the mayor elect 16 after the November election, there's a process and 17 you're identified as the person who is going to be the 18 chief. 19 A. Yes. 20 Q. Early on in the year there's the vacancy and 21 it's going to have to be filled; right? Was it the 22 first six months, nine months of the year? 23 A. Within the first five months. 24 Q. First five months?</p>	<p>1 Q. You had just been selected by the mayor to be 2 the chief about five months earlier; right? 3 A. Yes. 4 Q. You were asked to consider Gilbert Howell; 5 right? 6 A. Yes. 7 Q. He would have been your last choice; isn't that 8 correct? 9 A. It's a possibility he wouldn't have been at the 10 top of the list. 11 Q. It's fair to say Gilbert Howell would not have 12 been at the top of the list? 13 A. Right, because there were some fairly new, 14 inexperienced captains at that point, too, so he and 15 experience may have put them further down the list, 16 but I don't know if he would have been the last on the 17 list. 18 Q. I understand what you are saying. 19 A. Okay. 20 Q. But the people at the top of the list would 21 have included Captain Wright? 22 A. Yes. 23 Q. And the people at the top of the list would 24 have included Nancy Dietz at that time?</p>
Page 203	Page 205
<p>1 A. I believe as early as March, I believe. 2 Q. Did the mayor's office let you know that it 3 wanted you to be selecting Gilbert Howell at that 4 time? 5 A. It was suggested that I consider him. 6 Q. Okay. 7 A. I wasn't told that it was him. 8 Q. I understand. Right. It was suggested that 9 you consider Gilbert Howell for the selection at that 10 time? 11 A. Yes. 12 Q. Gilbert Howell wasn't your first choice by any 13 stretch of the imagination, was he? 14 A. No. 15 Q. Gilbert Howell had attendance problems back 16 then; right? 17 A. Yes. And the same issues. 18 Q. Same kinds of issues. Okay. 19 He demonstrated the same kinds of qualities 20 that we reviewed earlier on this morning? 21 A. Right. 22 Q. There was a pool of other available captains at 23 that time; right? 24 A. Right.</p>	<p>1 A. Yes. 2 Q. You had received this mention of Gilbert 3 Howell; right? 4 A. Yes. 5 Q. Then you were allowed to select the inspector 6 at that time, weren't you? 7 A. The inspector that I selected ended up being 8 the one appointed. 9 Q. You weren't told at that time that the mayor 10 was going to make the selection? 11 A. No. 12 Q. The public safety director didn't convey to you 13 that there's an inspector vacancy open and the mayor 14 is going to make that decision on his own? 15 A. No, I was not told that. 16 Q. But for the second time around in 2005 you were 17 told that? 18 A. Yes. 19 Q. So the procedure changed, didn't it? 20 A. Yes. 21 Q. When you were faced with the selection of 22 someone in 2001, you were told you were going to be 23 allowed to make the selection; right? 24 A. Yes.</p>

52 (Pages 202 to 205)

Michael J. Szczerba

Page 206	Page 208
<p>1 Q. Gilbert Howell's name was specifically</p> <p>2 mentioned from the mayor's office; right?</p> <p>3 A. Yes.</p> <p>4 Q. You selected James Wright?</p> <p>5 A. That's correct.</p> <p>6 Q. James Wright, is it fair to say in your</p> <p>7 judgment James Wright was a more qualified person for</p> <p>8 that position than Gilbert Howell?</p> <p>9 A. Yes.</p> <p>10 Q. Was it fair to say in your judgment that you</p> <p>11 felt that if Gilbert Howell was selected at that time,</p> <p>12 that the same kinds of problems you are having to deal</p> <p>13 with today you would have had to have been facing in</p> <p>14 2001?</p> <p>15 A. I considered that as a distinct possibility,</p> <p>16 yes.</p> <p>17 Q. That's one of the reasons why you didn't select</p> <p>18 him?</p> <p>19 A. That's correct.</p> <p>20 Q. So now we are back to 2005 and you are telling</p> <p>21 me that James Wright has announced he is retiring or</p> <p>22 whatever and there's going to have to be an inspector</p> <p>23 selected; right?</p> <p>24 A. Yes.</p>	<p>1 were going to make?</p> <p>2 A. Yes. In a roundabout way, yes.</p> <p>3 Q. There have been occasions where he has pushed</p> <p>4 for somebody other than the person you've selected?</p> <p>5 A. Correct.</p> <p>6 Q. That's happened on more than one occasion,</p> <p>7 hasn't it?</p> <p>8 A. Yes.</p> <p>9 Q. On those occasions, the public safety director</p> <p>10 has voiced concern over the race of the person under</p> <p>11 consideration?</p> <p>12 A. Yes.</p> <p>13 Q. On those occasions, for example, you might have</p> <p>14 selected a white employee for promotion and he has</p> <p>15 told you he would have preferred an African-American</p> <p>16 employee?</p> <p>17 A. Yes, and that was the only qualifier that he</p> <p>18 stated.</p> <p>19 Q. He has recited that kind of a qualifier on more</p> <p>20 than one occasion concerning a promotion; isn't that</p> <p>21 true?</p> <p>22 A. Yes. It's one-time dealing with the same</p> <p>23 promotion in a one-on-one meeting with myself and the</p> <p>24 director, and then there was a follow-up meeting in</p>
Page 207	Page 209
<p>1 Q. You are told that you, as the chief of police</p> <p>2 of the Wilmington Police Department, will not be</p> <p>3 making that selection?</p> <p>4 A. Correct.</p> <p>5 Q. Did the public safety director tell you why</p> <p>6 that was going to occur?</p> <p>7 A. No, he did not.</p> <p>8 Q. During your two meetings with the mayor and</p> <p>9 Mr. Montgomery where all four of you were present, did</p> <p>10 Montgomery, the mayor, or the public safety director</p> <p>11 tell you why you weren't going to be allowed to make</p> <p>12 the selection?</p> <p>13 A. No.</p> <p>14 Q. Did anyone ever tell you why you weren't going</p> <p>15 to be allowed to make the selection?</p> <p>16 A. No.</p> <p>17 Q. So during your reign, your term in office as</p> <p>18 the chief, this was unprecedented for them to tell you</p> <p>19 you could not make the selection?</p> <p>20 A. Correct.</p> <p>21 Q. There have been occasions, haven't there, when</p> <p>22 you've had to make selections for lower positions</p> <p>23 below inspector when the public safety director has</p> <p>24 told you that he was displeased with the selection you</p>	<p>1 the mayor's office.</p> <p>2 Q. Without using any names or anything like that,</p> <p>3 what ranks might have been involved?</p> <p>4 A. Lieutenant's rank at that time.</p> <p>5 Q. So on two occasions that came up with a</p> <p>6 lieutenant's rank?</p> <p>7 A. Yes. And it actually comes up any time I make</p> <p>8 my selection for promotions. I will come in and give</p> <p>9 the names of the officers, and that's usually followed</p> <p>10 up with a question from the director as to their race.</p> <p>11 Q. You're saying, first of all, whenever you're</p> <p>12 making promotions, are you telling me you met then</p> <p>13 with the public safety director?</p> <p>14 A. Yes, and also transfers. That did not start</p> <p>15 initially when I came in as a chief, but I also bring</p> <p>16 transfers to them.</p> <p>17 Q. When you're making a promotion, the public</p> <p>18 safety director will ask you what the race of the</p> <p>19 individual being promoted is?</p> <p>20 A. Yes.</p> <p>21 Q. And he also asks you that in regard to</p> <p>22 transfers?</p> <p>23 A. Yes, and will also ask the race of the people</p> <p>24 remaining on the band in our promotional system.</p>

53 (Pages 206 to 209)

Michael J. Szczerba

Page 210	Page 212
<p>1 Q. For the ranks of lieutenant on down, you use a</p> <p>2 banding and testing process?</p> <p>3 A. Correct.</p> <p>4 Q. Captains and up you don't have a banding</p> <p>5 process?</p> <p>6 A. Right.</p> <p>7 Q. But when you're making selections from bands of</p> <p>8 lieutenants and sergeants and things like that, and</p> <p>9 you're advising the public safety director of the</p> <p>10 selection, you're telling me he always asks you the</p> <p>11 race of the individual?</p> <p>12 A. Yes.</p> <p>13 Q. When James Wright was selected by you, is it</p> <p>14 true that you felt they wanted a black individual to</p> <p>15 be the uniformed operations inspector in 2001?</p> <p>16 A. No.</p> <p>17 Q. You didn't feel they wanted you to place a</p> <p>18 black in that position?</p> <p>19 A. No.</p> <p>20 Q. They were telling you to consider Gilbert</p> <p>21 Howell, weren't they?</p> <p>22 A. That's correct.</p> <p>23 Q. You knew, of course, he was African-American?</p> <p>24 A. Yes.</p>	<p>1 Q. That goes back to Chief Manelski's time and</p> <p>2 even Mayor Maloney's time?</p> <p>3 A. Mayor McLaughlin.</p> <p>4 Q. So Maloney would have been before.</p> <p>5 But there was a time when there were four</p> <p>6 inspectors, then three inspectors. Do you remember</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. You are aware of that and it ultimately came</p> <p>10 down to two?</p> <p>11 A. Yes.</p> <p>12 Q. You are telling me when you were making your</p> <p>13 decision in 2001 that you are aware there has always</p> <p>14 been at least one black and one white in the inspector</p> <p>15 positions?</p> <p>16 A. Yes. They have never been of the same race.</p> <p>17 Q. Right. Never the same race at the same time?</p> <p>18 A. Whether it's four, three, or two inspectors,</p> <p>19 they were never all the same race.</p> <p>20 Q. Right. But we are at the meetings that you are</p> <p>21 having in 2005 and the conversations where you are</p> <p>22 being told you are being taken out of the loop for</p> <p>23 this position. Okay? Right?</p> <p>24 A. I was really only told that once, and that was</p>
Page 211	Page 213
<p>1 Q. But no one explicitly told you to put an</p> <p>2 African-American into that position in 2001?</p> <p>3 A. No.</p> <p>4 Q. At that time you were aware, weren't you, that</p> <p>5 for more than 20 years that the person who held that</p> <p>6 position as uniformed inspector had been an</p> <p>7 African-American?</p> <p>8 MS. CHEEK: Objection to form.</p> <p>9 A. The answer to that question is no.</p> <p>10 Q. Oh, okay. At the very beginning today I</p> <p>11 marched out a little chart I created.</p> <p>12 A. And I saw the breakdown then.</p> <p>13 Q. You saw the breakdown?</p> <p>14 A. Yes. I always was aware that, within the</p> <p>15 inspector's rank, there was an African-American and a</p> <p>16 Caucasian.</p> <p>17 Q. You are always aware of that?</p> <p>18 A. Yes, but I wasn't sure that it fell along those</p> <p>19 lines with that particular assignment versus the</p> <p>20 investigative or administrative side versus the</p> <p>21 uniformed side.</p> <p>22 Q. You have been around since about '78 I think</p> <p>23 you told us?</p> <p>24 A. Yes.</p>	<p>1 by the director.</p> <p>2 Q. I apologize.</p> <p>3 A. Okay.</p> <p>4 Q. We are at the meetings. The point is there's</p> <p>5 been a retirement of a black inspector; right?</p> <p>6 A. Right.</p> <p>7 Q. There is a white inspector, Martin Donohue;</p> <p>8 right?</p> <p>9 A. Right.</p> <p>10 Q. The pool of available people includes a white</p> <p>11 female captain, Nancy Dietz?</p> <p>12 A. That's correct.</p> <p>13 Q. The pool also includes other white officers?</p> <p>14 A. That's correct.</p> <p>15 Q. And the pool also includes a black officer,</p> <p>16 Gilbert Howell?</p> <p>17 A. Yes, an Hispanic officer.</p> <p>18 Q. Captain Ayala?</p> <p>19 A. Yes.</p> <p>20 Q. Those are the people in the pool?</p> <p>21 A. Yes.</p> <p>22 Q. You told me this morning how much better</p> <p>23 qualified you felt Nancy Dietz was for selection for</p> <p>24 the inspector position --</p>

Michael J. Szczerba

Page 214	Page 216
<p>1 A. Right.</p> <p>2 Q. -- versus Gilbert Howell; right?</p> <p>3 A. Yes.</p> <p>4 Q. I think you told me this morning you felt she</p> <p>5 was the most qualified person for the position?</p> <p>6 A. Yes.</p> <p>7 Q. And if allowed to make the promotion, you would</p> <p>8 have promoted a white female?</p> <p>9 A. Yes.</p> <p>10 Q. That would have resulted in two Caucasian</p> <p>11 officers being the inspectors in the Wilmington Police</p> <p>12 Department?</p> <p>13 A. Correct.</p> <p>14 Q. If the 20-year history we went over this</p> <p>15 morning is correct, that would have been the first</p> <p>16 time in 20 some years when two people of the same race</p> <p>17 held the rank of inspector?</p> <p>18 A. That's correct.</p> <p>19 Q. So that was the situation that the mayor's</p> <p>20 office was facing when Inspector Wright retired?</p> <p>21 A. Correct.</p> <p>22 Q. If you were allowed to make it, you would have</p> <p>23 selected a white female?</p> <p>24 A. Yes. I was allowed to select the best</p>	<p>1 A. That's right.</p> <p>2 MR. NEUBERGER: So let's take our break</p> <p>3 right here and we'll reconvene in ten minutes. Okay?</p> <p>4 THE WITNESS: Okay.</p> <p>5 (A recess was taken at this time.)</p> <p>6 BY MR. NEUBERGER:</p> <p>7 Q. We were on the meetings. Why don't you tell me</p> <p>8 the first meeting you were at. I think you've told me</p> <p>9 that it was indicated that you weren't going to be</p> <p>10 making the decision, you want to say something, say</p> <p>11 it.</p> <p>12 So then did the first meeting occur?</p> <p>13 A. No. That was the initial meeting between</p> <p>14 myself and Director Mosley.</p> <p>15 Q. Mosley told you that. Then after that, one of</p> <p>16 the two meetings with the mayor Mosley and Montgomery</p> <p>17 happened?</p> <p>18 A. Yes.</p> <p>19 Q. Go ahead. What happened in that first meeting?</p> <p>20 A. It was after an update meeting with the mayor.</p> <p>21 We met again almost immediately after this update</p> <p>22 meeting, but it was different. It was just -- then it</p> <p>23 was limited to myself, the mayor, Mr. Montgomery, and</p> <p>24 the director. There was some brief discussions to my</p>
Page 215	Page 217
<p>1 candidate I thought for that position as I did in</p> <p>2 2001. That's the same way I thought in 2005. Race or</p> <p>3 gender had no play in my mind. I want to put the best</p> <p>4 person in that position. People might question my</p> <p>5 decisions, but that's what I should be able to do as</p> <p>6 chief of police. As one of the citizens of</p> <p>7 Wilmington, I want the chief of police to have that</p> <p>8 authority.</p> <p>9 So, you know, I put a blindfold on as far</p> <p>10 as anyone's characteristics. I wanted the best person</p> <p>11 for that position.</p> <p>12 Q. You are not saying you recommended Nancy Dietz</p> <p>13 because she was a female?</p> <p>14 A. Not because she's female. Not because she's</p> <p>15 white. I did not select James Wright because he was</p> <p>16 African-American or because he was male. I wanted to</p> <p>17 put the best person I thought at that time to put in</p> <p>18 that position.</p> <p>19 Q. You are saying you wouldn't have selected Nancy</p> <p>20 Dietz because she was white and you wanted to have two</p> <p>21 white inspectors?</p> <p>22 A. Most definitely not.</p> <p>23 Q. But the point is you were told you weren't</p> <p>24 going to be making the decision?</p>	<p>1 selection and the mayor listened to that. There</p> <p>2 wasn't really much of a meeting there.</p> <p>3 You know, it was still -- at that point the</p> <p>4 mayor was going to recommend or was appointing</p> <p>5 Inspector Howell -- or Captain Howell to the rank of</p> <p>6 inspector and pretty much just left it at that. I was</p> <p>7 spoken out on the subject. I stated my feelings and</p> <p>8 anticipation of what that could bring about.</p> <p>9 Then the next meeting was after a meeting</p> <p>10 with the county leadership, a breakfast meeting which</p> <p>11 occurred at the -- it's now the Doubletree, and we met</p> <p>12 out in the lobby after that meeting with the county</p> <p>13 officials. It was pretty much a rerun. At that point</p> <p>14 it was agreed upon that the director and mayor would</p> <p>15 be meeting with Captain Howell.</p> <p>16 Q. So you are saying at the first meeting, this is</p> <p>17 a meeting for other purposes --</p> <p>18 A. Yes.</p> <p>19 Q. -- and the vacancy comes up?</p> <p>20 A. Right.</p> <p>21 Q. Are you the one that brings it up or did they</p> <p>22 bring it up?</p> <p>23 A. I didn't bring it up. It may have been brought</p> <p>24 up by either Mr. Montgomery or the director.</p>

55 (Pages 214 to 217)

Michael J. Szczerba

Page 218	Page 220
<p>1 Q. It's communicated to you that the mayor has 2 selected Gilbert Howell? 3 A. Yes. 4 Q. Did any of the three people tell you what 5 information they reviewed in arriving at that 6 decision? 7 A. No. 8 Q. Did any of them tell you who the pool of 9 qualified candidates was, if any, that they surveyed? 10 A. No. 11 Q. They never told you that they considered 12 anybody besides Gilbert Howell; right? 13 A. No, they did not. 14 Q. Gilbert Howell was the one who was communicated 15 to you in 2001 that they wanted you to look at? 16 A. Yes, to consider him, yes. 17 Q. Did the mayor state why he selected Gilbert 18 Howell? 19 A. No. The only comment I remember being made by 20 the mayor is that Captain Howell has good street 21 sense. He's a street person, street cop. That was 22 about it. No other comments or qualifications or 23 things like that. 24 Q. Did the mayor indicate he looked at his job</p>	<p>1 A. Right. 2 Q. How about Mr. Montgomery, is there anything 3 Mr. Montgomery said at the meeting? 4 A. Very little. I think when they, you know, they 5 were speaking on the qualities of the then, 6 now-Captain Dietz, he agreed with me that she is a 7 very fine officer, fine supervisor, fine 8 representative of the department, not in those exact 9 words, but he was agreeing it would be a good 10 selection. 11 Q. So are you saying he brought up her name? 12 A. No. I did. 13 Q. Right. I think you are going to tell me you 14 argued why she should be selected? 15 A. Correct. 16 Q. But I'm saying before you brought up her name, 17 did any three of those people bring up her name? 18 A. No. 19 Q. Well, once you were told that the selection had 20 been made, what did you say about Captain Dietz or 21 other candidates? 22 A. It was a selection made by the mayor. It was 23 done at that point. I knew there was going to be some 24 follow-up discussion with the mayor and the director</p>
Page 219	Page 221
<p>1 evaluations from the city personnel department? 2 A. He never indicated that, so I don't know. I 3 can't respond to that. 4 Q. Did the mayor indicate that he looked at his 5 disciplinary record? 6 A. No, he did not. 7 Q. Did the mayor indicate he looked at his 8 attendance record? 9 A. No, he did not. 10 Q. All you are remembering is his remark on the 11 street smarts? 12 A. Yes. 13 Q. How about the public safety director, what do 14 you remember him saying at the meeting? 15 A. I pretty much don't remember him saying much at 16 all, if anything. 17 Q. So -- 18 A. Not while I was present. 19 Q. While you were present, was he agreeing with 20 the fact that the decision had been made to select 21 Gilbert Howell? 22 A. Neither. 23 Q. So he wasn't disagreeing or whatever? He was 24 just sitting there?</p>	<p>1 and/or the director with then-Captain Howell. 2 Q. Maybe I'm wrong. Didn't you tell them about 3 problems that would be caused by the selection of 4 Captain Howell? 5 A. Yes, yes. 6 Q. Didn't you tell them reasons why Captain Dietz 7 was a better selection? 8 A. Yes. 9 Q. Right. 10 A. In addition to some, you know, questions I had 11 with, you know, Captain Howell's health issues, you 12 know, again coming in his capacity to handle that job, 13 attendance, you know, other factors with disciplinary 14 history. 15 Q. You pointed out all those things to him? 16 A. Yes. 17 Q. It didn't change their minds? 18 A. No. 19 Q. It didn't change the mayor's mind? 20 A. No. 21 Q. What kind of things did you tell them about 22 Nancy Dietz? Because you did say Mr. Montgomery said 23 something about she's a fine officer or whatever, so 24 you must have been telling him something. What were</p>

56 (Pages 218 to 221)

Michael J. Szczerba

<p style="text-align: right;">Page 222</p> <p>1 you saying?</p> <p>2 A. Diversified work experience, always represented</p> <p>3 our department well, covered the, you know, education,</p> <p>4 some of the things we covered here today, education,</p> <p>5 FBI National Academy graduate, lack -- pretty much the</p> <p>6 lack of disciplinary record, my firsthand knowledge</p> <p>7 and experience in limited time working with her,</p> <p>8 actually working under her command at one point</p> <p>9 because she was a supervisor, that I never worked</p> <p>10 directly for her, but on occasions I would have to</p> <p>11 work for her and knew her work ethic, knew her</p> <p>12 community involvement, so on and so forth. I can't</p> <p>13 remember exactly what I told them, but I know I</p> <p>14 covered all that.</p> <p>15 Q. So you covered all that?</p> <p>16 A. Yes.</p> <p>17 Q. And we are talking --</p> <p>18 A. Yes. There was not much -- there was never any</p> <p>19 feedback in the negative from any of the people in the</p> <p>20 room, from the mayor, Bill -- Mr. Montgomery, or the</p> <p>21 director.</p> <p>22 Q. So they knew all these positive things about</p> <p>23 Nancy Dietz that you communicated to them that day?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 224</p> <p>1 it didn't meet to her liking right away.</p> <p>2 We sat down and she gracefully accepted</p> <p>3 that and did well in that position, in turn doing well</p> <p>4 in that position is why I did not hesitate in putting</p> <p>5 her in the position of the commanding officer of the</p> <p>6 Human Resource Division.</p> <p>7 Q. So you were making all those kinds of points</p> <p>8 with them?</p> <p>9 A. Yes.</p> <p>10 Q. The mayor didn't change his mind?</p> <p>11 A. No, he did not.</p> <p>12 Q. The only reason he was giving to you --</p> <p>13 A. Right, to me.</p> <p>14 Q. -- at that time for the selection of Gilbert</p> <p>15 Howell was a reference that he has street smarts?</p> <p>16 A. Yes. And he also made reference to some of the</p> <p>17 references that he was receiving from the community,</p> <p>18 and I could not name any of those people. I don't</p> <p>19 recall who they were. But that he was getting some</p> <p>20 feedback from the community as to the quality of</p> <p>21 Inspector -- Captain Howell to be inspector.</p> <p>22 Q. So he made reference to he had received</p> <p>23 feedback from the community supportive of Howell?</p> <p>24 A. Yes, Captain Howell.</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. Mr. Montgomery indicated that he had some</p> <p>2 familiarity with Nancy Dietz?</p> <p>3 A. Yes.</p> <p>4 Q. We've seen two documents here the mayor signed</p> <p>5 about the Big Brothers/Big Sisters that the mayor</p> <p>6 signed regarding Nancy Dietz. Did he mention her</p> <p>7 community involvement?</p> <p>8 A. No, not that I recall.</p> <p>9 Q. Did you tell him that she had street smarts,</p> <p>10 too, in response to what the mayor had said?</p> <p>11 A. I don't know if I used the term "street</p> <p>12 smarts," but she has experience in our patrol</p> <p>13 division, follow-up investigations, held the</p> <p>14 position -- you know, the responsible positions of</p> <p>15 being in our Internal Affairs Division, and then the</p> <p>16 responsible position of being in our Human Resources</p> <p>17 Division, that she was a person I called upon to --</p> <p>18 you know, when I wanted to rearrange the house, so to</p> <p>19 speak, when I -- I don't know how long after being</p> <p>20 chief, which necessitated her moving from the position</p> <p>21 which she enjoyed very much in the Criminal</p> <p>22 Investigation Division to move to the Office of</p> <p>23 Professional Standards because I knew she was a person</p> <p>24 I needed in that position at that point. I know that</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. Have you ever made an appointment or promotion</p> <p>2 within the police department because people in the</p> <p>3 community were pushing for somebody?</p> <p>4 A. No. No, that would not be the reason for me to</p> <p>5 promote anyone. I do occasionally receive, you know,</p> <p>6 candid references and people making comments when they</p> <p>7 know there's a position open, but it's not dependent</p> <p>8 upon those references from the community for me to</p> <p>9 make a promotion.</p> <p>10 Q. Well, your police department has to be</p> <p>11 accredited; right?</p> <p>12 A. Yes, we are.</p> <p>13 Q. What's the organization that accredits your</p> <p>14 police department?</p> <p>15 A. The Commission For Law Enforcement</p> <p>16 Accreditation.</p> <p>17 Q. That's some national body?</p> <p>18 A. Yes.</p> <p>19 Q. They come around every ten years or something</p> <p>20 and you have to jump through the hoops?</p> <p>21 A. No. Jumping through the hoops every five</p> <p>22 years.</p> <p>23 Q. Five.</p> <p>24 A. It originally started at five years, so it's</p>

57 (Pages 222 to 225)

Michael J. Szczerba

<p style="text-align: right;">Page 226</p> <p>1 down to three, so I stand corrected. It's quite a 2 task. It's quite a task. About the 17,000 police 3 agencies, there are only about 600 that are fully 4 accredited. 5 Q. And you are a fully accredited police agency? 6 A. Yes, we are. 7 Q. You are probably very proud of that. 8 A. Yes. 9 Q. That accreditation is some sort of a mark of 10 the professionalism of your police agency and the 11 other 599; right? 12 A. Yes, yes. I think it demonstrates to the 13 community that we are up to the task of providing the 14 best possible police services. 15 Q. They review your standards, your process for 16 promotions? 17 A. Yes, yes. 18 Q. Have you identified as one of the reasons for 19 promotions that you give in to whoever in the 20 community is lobbying for a promotion, that would not 21 be looked upon favorably by an accrediting body; is 22 that right? 23 MS. CHEEK: Objection to form. 24 A. That's correct.</p>	<p style="text-align: right;">Page 228</p> <p>1 A. That's correct. 2 Q. For example, if I'm a Republican and I want to 3 be a police officer and I say pick me because I'm a 4 Republican, you'd say you better be able to do the 5 physical and all these other kinds of things, you are 6 not getting in because you are a Republican; right? 7 A. Right. 8 Q. You got to meet neutral objective standards; 9 right? 10 A. Yes. 11 Q. And community pressure for a person is not a 12 neutral objective standard that would allow a police 13 department to function according to professional 14 norms, is it? 15 A. No. 16 Q. But the mayor did tell you about that factor, 17 community support for him and tell you about street 18 smarts? 19 A. Yes. 20 Q. Are there any other reasons the mayor gave you 21 for the selection of Gilbert Howell -- 22 A. No. 23 Q. -- on that day? 24 A. No.</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. The rules and regulations of the accrediting 2 body require that those kinds of extraneous influences 3 be eliminated from a modern, professional police 4 force; isn't that correct? 5 A. Yes. I cannot quote you a directive or a 6 standard, but I'm sure that would be covered. We have 7 a set promotional system in place that the 8 accreditation team has reviewed several times that 9 meets their standards, and that's the one we presently 10 have today. 11 Q. The City of Wilmington has an affirmative 12 action plan? 13 A. Yes. 14 Q. There is an affirmative action plan for the 15 police department, isn't there? 16 A. For the whole city. 17 Q. For the whole city. 18 You are not supposed to select people for 19 positions because of their race or their gender or 20 their religion and various other protected categories; 21 right? 22 A. Correct. 23 Q. You are not supposed to select people because 24 of their political affiliation, are you?</p>	<p style="text-align: right;">Page 229</p> <p>1 Q. On any other day, are there any other reasons 2 the mayor gave you for the selection of Gilbert 3 Howell? 4 A. No. 5 Q. So the mayor didn't respond when you said that 6 Nancy Dietz had better educational background than 7 Gilbert Howell? 8 A. No. 9 Q. He didn't respond when you pointed out the 10 attendance and management problems that you expected 11 if Gilbert Howell was selected? He didn't respond to 12 that? 13 A. Right. 14 Q. The other kinds of demonstrated abilities that 15 Nancy Dietz had that you passed on to the mayor, he 16 didn't respond to any of those? 17 A. No. 18 Q. All you remember him was just giving these two 19 reasons? 20 A. Yes. 21 Q. Now, how about Mr. Montgomery, did he throw any 22 other reasons out during anything he said at that 23 time? 24 A. No.</p>

58 (Pages 226 to 229)

Michael J. Szczerba

Page 230	Page 232
<p>1 Q. You are telling me the director of public 2 safety didn't throw any other reasons out at that 3 time? 4 A. No. 5 Q. Right? Okay. 6 And I think you said there was a second 7 occasion when the four of you were present that at 8 least the inspector position came up? 9 A. Yes. 10 Q. This is the time when they told you that they 11 were having Gilbert Howell in or something to talk to 12 him? 13 A. Right. 14 Q. Did you try to reargue the decision at that 15 time? 16 A. No, no. At that point I knew it was a made 17 decision. It would be up for them -- in discussion 18 with them, being the mayor and/or the director with 19 Captain Howell. 20 Q. So it just sort of came up briefly? Is that 21 what you are saying? 22 A. Yes. 23 Q. Did the public safety director give any 24 additional reasons why Gilbert Howell was selected at</p>	<p>1 A. Yes. 2 Q. Are you aware that she went and spoke to the 3 director? 4 A. Yes. That was done through -- I'm aware of 5 that because it was done through the chain of command. 6 Q. Would her meeting with the mayor have occurred 7 or the public safety director have occurred after 8 Gilbert Howell was selected? 9 A. My recollection is it occurred before. 10 Q. I think you're saying that when you had that 11 first meeting, they were telling you that the decision 12 had been made to select Gilbert Howell? 13 A. Yes, but not officially announced. 14 Q. Not officially announced? 15 A. Okay. 16 Q. So I'm saying: Do you understand that she met 17 with the mayor or anybody before that meeting where 18 you learned that it was unofficially -- 19 A. No. I believe it was after. 20 Q. It was after? 21 A. After, but before -- before the specific 22 announcement. 23 Q. We had a document earlier in the day with a 24 date and everything.</p>
Page 231	Page 233
<p>1 that time? 2 A. No. 3 Q. Did Mr. Montgomery give any additional reasons 4 why Gilbert Howell was selected at that time? 5 A. No. 6 Q. Did the mayor at that time give any additional 7 reasons? 8 A. No. 9 Q. Were either of these meetings recorded? 10 A. No. 11 Q. Has there been any e-mail traffic about the 12 selection of Gilbert Howell that you participated in? 13 A. No. 14 Q. Are you aware of any documentation that's out 15 there that contains a statement of the reasons why the 16 mayor selected him? 17 A. None that I'm aware of. 18 Q. Has Gilbert Howell ever told you why the mayor 19 selected him? 20 A. No. 21 Q. No? 22 A. No. 23 Q. Are you aware that Nancy Dietz went and spoke 24 to the mayor?</p>	<p>1 A. Right, right. 2 Q. You think it was before that specific document 3 was published? 4 A. Right. 5 Q. Rhett Ruggerio, is that something that might 6 have been present at any of these meetings? 7 A. No. 8 Q. A John Rago, was he somebody that would have 9 been present at any of those meetings? 10 A. I don't believe so. 11 Q. After that first meeting, okay, but before the 12 second one, did a rumor start that Gilbert Howell was 13 going to be selected within the department? 14 MS. CHEEK: Objection to form. I'm just 15 not clear on which meeting. When you say the first 16 meeting, which meeting you are talking about? Because 17 there are three, I think. 18 MR. NEUBERGER: Yes, there really are. 19 BY MR. NEUBERGER: 20 Q. The very first meeting with the four of you 21 where it was indicated that Gilbert Howell was going 22 to be selected. 23 Did a rumor start after that time that 24 Gilbert Howell was going to be the new inspector?</p>

Michael J. Szczerba

Page 234	Page 236
<p>1 A. That's a possibility. Nothing came back to me 2 directly. 3 Q. I'm just trying to jog your memory. 4 My client, I think my client would testify 5 that some sort of a rumor started and she spoke to you 6 or saw you in the staff garage. I didn't even know 7 there is a staff garage. A parking lot out back, but 8 there's a staff garage, apparently, and she asked you 9 about it that she had heard that Gilbert Howell was 10 going to be selected. Does that jog anything in your 11 memory? 12 A. That's a possibility, but it doesn't jog my 13 memory. 14 Q. It's possible, but you don't remember the 15 conversation? 16 A. Correct. 17 Q. Are you aware that she eventually went and 18 spoke to the director before the announcement was 19 officially made? 20 A. Yes. 21 Q. Was it on your recommendation? Do you remember 22 that she might have had a conversation with you? 23 A. Yes. I do recall a conversation. I don't 24 think that was a parking lot or garage conversation.</p>	<p>1 met with her? 2 A. No. 3 Q. There was a lawsuit involving somebody by the 4 name of Kenneth Boyd. You are aware of that? 5 A. Yes. 6 Q. I think you gave a deposition in that lawsuit; 7 is that correct? 8 A. Yes. 9 Q. I think, was that a recent trial? 10 A. Yes, in October of '06. 11 Q. You testified? 12 A. Yes. 13 Q. Were you questioned at the deposition about the 14 inspector position that went to Gilbert Howell? 15 A. Yes, it did come up. 16 Q. What do you recall came up? 17 A. It came up a question as to is it true that 18 Gilbert Howell was not your selection, and yes. Who 19 was that? And I stated "another Wilmington police 20 captain," and then there was an objection, and then I 21 ended up saying the person I selected as Captain Nancy 22 Dietz. 23 Q. Did you let Nancy Dietz know after that 24 deposition that you had to use her name in the</p>
Page 235	Page 237
<p>1 I believe that was in my office. 2 Of course, I wasn't going to deny when I 3 thought, you know, that that would maybe provide some 4 information to her that she could get on her own that 5 was fine because at that point I was out of the 6 conversation or the selection process. 7 Q. So she asked you something about the inspector 8 position? 9 A. Or if she could meet with the director. 10 Q. Right. She was asking you permission to go to 11 the director? 12 A. Yes. 13 Q. Through the chain? 14 A. Ultimately, I believe, to speak with the mayor. 15 Q. She was going through you because she wanted to 16 go through the chain? 17 A. Yes. 18 Q. Is it your understanding she did so? 19 A. Yes, I believe so. 20 Q. Did the public safety directory ever tell you 21 that, that he met with her? 22 A. I don't know we ever had a conversation that he 23 confirmed that. 24 Q. Did you ever learn from the mayor that he had</p>	<p>1 deposition? 2 A. Yes, just after that deposition, never before. 3 There was never any discussion -- 4 Q. Right. 5 I guess what I'm trying to ask you is: Did 6 she then ask you why she wasn't selected or anything 7 and you may have told her something? 8 A. No. 9 Q. So you don't remember her asking you why she 10 wasn't selected in that time? 11 A. After the deposition? 12 Q. Yes. After the deposition, I think you just 13 told me that you mentioned to her that her name came 14 up at the deposition? 15 A. Right. 16 Q. Because the question was asked about the 17 inspector position. 18 A. Right. And I had informed her of that because 19 I know it has never been discussed up to that point as 20 to confirmation from me directly to her or anyone else 21 for that fact that there may have been speculation as 22 to who my selection was, but it never came from me or 23 anyone else. 24 Q. So you then let her know at that time since it</p>

60 (Pages 234 to 237)

Michael J. Szczerba

<p style="text-align: right;">Page 238</p> <p>1 was given in a deposition that you had recommended 2 her? 3 A. Yes. 4 Q. Then what I'm asking you is: Do you remember 5 discussing with her the fact that she didn't get the 6 appointment besides just telling her that one thing? 7 A. No. There's a possibility we discussed it, it 8 was the mayor's selection that Mr. Montgomery agreed 9 that she was a well-qualified candidate, but I don't 10 recall anything else. 11 Q. What I'm asking you is: You don't have much of 12 a memory of a discussion with Nancy Dietz that day? 13 A. Right, right. 14 Q. Would you have any notes of your discussion 15 with Nancy Dietz that day? 16 A. No. 17 Q. Do you have any reason to believe that she 18 wouldn't give an accurate recollection of what her 19 memory is of the conversation that day? 20 A. No. 21 Q. Is it fair to say from your conversations with 22 the mayor on those two occasions that he made the 23 final decision to select Gilbert Howell for the 24 position of the inspector?</p>	<p style="text-align: right;">Page 240</p> <p>1 certain training on the laws relating to the treatment 2 of employees under you; right? 3 A. Yes. 4 Q. You know that you can't discriminate against an 5 employee because of where they go to church or their 6 age or their race or their gender. You know that; 7 right? 8 A. Yes. 9 Q. Is it your observation that Mayor Baker also 10 knows that there are such laws? 11 A. Yes. 12 Q. Without asking any address, does the mayor have 13 more than one house in the City of Wilmington? Does 14 he own more than one residence or something? 15 A. No. I believe he rents his residence. 16 Q. He rents. So he might not even own a residence 17 in the city? 18 A. I believe he lives in an apartment. I don't 19 know if he has a house. 20 Q. Shows how much I know. 21 Since I know what you make a year now, do 22 you have any idea what the mayor makes a year? 23 A. I believe roughly in the area of \$100,000. I'm 24 not sure. I'm not aware of his salary.</p>
<p style="text-align: right;">Page 239</p> <p>1 A. Yes. 2 Q. Do you have any reason to doubt that he had the 3 final authority to make that selection? 4 A. No. 5 Q. Do you have any reason to believe that the 6 authority to make that selection resided in some 7 committee, some group other than the mayor? 8 A. No. 9 Q. That selection is not something that had to be 10 made by the administrative board or the City of 11 Wilmington, was it? 12 A. No. 13 Q. He wasn't acting in such a way that would lead 14 you to believe that he selected Gilbert Howell by 15 accident, did he? 16 A. No. 17 Q. He wasn't acting in such a way as to lead you 18 to believe that he made a mistake in uttering Gilbert 19 Howell's name when he meant somebody else? 20 A. No. 21 Q. So would you agree that he deliberately chose 22 Gilbert Howell for that position? 23 A. Yes. 24 Q. As a city employee and a manager, you undergo</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. Do you have a pension? 2 A. Yes, I do. 3 Q. Do you know if the mayor, as a formal council 4 person and the mayor now, has a pension? 5 A. I believe he does. 6 Q. You think so. Okay. 7 So is it your understanding that the mayor 8 is the person who always has the final decision on 9 selecting inspectors for the City of Wilmington? 10 A. Yes. 11 Q. Are you saying the final decision for other 12 promotions within the police department rest with the 13 public safety director or with you? 14 A. Supposed to rest with me. 15 Q. But... 16 A. However, I make notification to the public 17 safety director as to all my promotions and all my 18 transfers. They have never been altered in any way. 19 However, I still have to, before I can announce those 20 in a memorandum like you saw officially, I have to 21 report that to the director of public safety. 22 Q. Right. And you can't announce someone until he 23 gives some sort of a go-ahead? 24 A. That's correct, and I believe that go-ahead</p>

61 (Pages 238 to 241)

Michael J. Szczerba

Page 242	Page 244
<p>1 comes from Mr. Montgomery.</p> <p>2 Q. On occasion that go-ahead hasn't been as</p> <p>3 swiftly issued as you would wish?</p> <p>4 A. Right.</p> <p>5 Q. Are you aware of any written ordinances or</p> <p>6 policies of the City of Wilmington that govern the</p> <p>7 mayor's exercise of authority to appointment</p> <p>8 inspectors?</p> <p>9 A. Just that they are appointed, but I'm not aware</p> <p>10 of any.</p> <p>11 Q. For example, we talked a little bit about</p> <p>12 there's an affirmative action plan for the city a</p> <p>13 little while ago; right?</p> <p>14 A. Right.</p> <p>15 Q. There's also a city ordinance that says the</p> <p>16 city shall not discriminate against people on the base</p> <p>17 of race, religion, and other categories; right?</p> <p>18 A. Yes.</p> <p>19 Q. That's the law?</p> <p>20 A. Yes.</p> <p>21 Q. You know that there are federal laws dealing</p> <p>22 with that, too, for employees; right?</p> <p>23 A. Yes.</p> <p>24 Q. And you also know as a trained police officer</p>	<p>1 Q. Is it your understanding that the city charter</p> <p>2 or the city government, its laws, just give that</p> <p>3 authority to the mayor to exercise?</p> <p>4 A. Yes.</p> <p>5 Q. It's your understanding, I think you are</p> <p>6 telling me that there are no other committees or</p> <p>7 groups that participate in the exercise of that</p> <p>8 authority?</p> <p>9 A. No.</p> <p>10 Q. Right?</p> <p>11 A. Right.</p> <p>12 Q. Do you agree that the mayor is the ultimate</p> <p>13 person in charge of appointing the inspectors?</p> <p>14 A. Yes.</p> <p>15 Q. The City of Wilmington contends in this case</p> <p>16 that it has exercised reasonable care to prevent the</p> <p>17 presence of discrimination in the selection of Gilbert</p> <p>18 Howell. Okay?</p> <p>19 Are you aware of any things the personnel</p> <p>20 department or any other managers in the City of</p> <p>21 Wilmington did to ensure that the mayor didn't</p> <p>22 discriminate in selecting Gilbert Howell?</p> <p>23 A. I'm not aware of any.</p> <p>24 Q. Not aware of any?</p>
Page 243	Page 245
<p>1 that there's something called the United States</p> <p>2 constitution that deals with discriminating against</p> <p>3 people because of their race, for example; right?</p> <p>4 A. Yes, yes.</p> <p>5 Q. Aside from those kinds of laws and ordinances</p> <p>6 that say the mayor shall not discriminate against</p> <p>7 people on the base of race and everything, do you</p> <p>8 believe that when he's appointing somebody he can</p> <p>9 ignore those laws?</p> <p>10 A. No.</p> <p>11 Q. You are not saying that?</p> <p>12 A. Right, right.</p> <p>13 Q. But what I'm saying is: Are there any other</p> <p>14 policies or ordinances out there that you are aware of</p> <p>15 that say he has to go through a posting process, you</p> <p>16 know, 30 days, a job description and give people time</p> <p>17 to apply and assign points during interviews or</p> <p>18 anything? Is there anything that governed the</p> <p>19 exercise of his authority?</p> <p>20 A. No.</p> <p>21 Q. You, being within the police department, you</p> <p>22 are unaware of any such written documents that would</p> <p>23 govern his --</p> <p>24 A. Yes.</p>	<p>1 A. No.</p> <p>2 Q. Throughout the police department, from captain</p> <p>3 on down, for promotions, there's a process that's</p> <p>4 followed; right?</p> <p>5 A. Yes.</p> <p>6 Q. In fact, over the past ten years, hasn't the</p> <p>7 city or the police department worked with some sort of</p> <p>8 outside experts about trying to see that your</p> <p>9 promotion process is a fair and efficient and modern</p> <p>10 one?</p> <p>11 A. Yes. We utilize a consultant for our</p> <p>12 promotional system.</p> <p>13 Q. It's not this fellow up at Penn, is it? Who is</p> <p>14 it?</p> <p>15 A. It's a management scientist to the person who</p> <p>16 runs that company, a gentleman by the name of David</p> <p>17 Wagner.</p> <p>18 Q. When it comes to promotions through lieutenant,</p> <p>19 there's a testing process; right?</p> <p>20 A. Yes, there is.</p> <p>21 Q. The tests are sought to be neutral and</p> <p>22 nondiscriminatory?</p> <p>23 A. Correct.</p> <p>24 Q. They're constructed with the purpose in mind of</p>

62 (Pages 242 to 245)

Michael J. Szczerba

Page 246	Page 248
<p>1 eliminating the opportunity for discrimination to 2 occur? 3 A. Correct. 4 Q. Then you are telling me you end up with bands? 5 A. Yes. 6 Q. And then I assume within a band there's 7 rankings like A, B, C band? How does it happen with 8 your force? 9 A. That's how it happens. 10 Q. Then the chief would have authority within 11 A band to select people? 12 A. Right. 13 Q. And if you exhausted all of the A's, then you'd 14 have to go down to a B? 15 A. Correct. 16 Q. Within A, the chief is given some authority to 17 make his selection? 18 A. Yes. 19 Q. But when the chief is making that selection, 20 the chief is always acting in a way such that he is 21 not discriminating against people on the basis of race 22 or gender; isn't that right? 23 A. That's right. 24 Q. You're trained that way; right?</p>	<p>1 you're looking at the pool of captains for promotion? 2 A. No. It's just a pool of eligible sergeant 3 candidates and a pool of eligible lieutenant 4 candidates, which are sergeants. 5 Q. But there's not an outside board that comes in 6 and does oral interviews of captains in various areas 7 such as leadership and decision-making and things like 8 that and then rankings and then that gives you some 9 raw data -- 10 A. No. 11 Q. -- to make a decision from? 12 A. No, there is not. 13 Q. So you don't do that? 14 A. Right. 15 Q. You do it based on your experience with the 16 people and your knowledge of their prior record? 17 A. Correct. 18 Q. But all the time knowing that you shouldn't 19 discriminate against people on the base of race or 20 gender or whatever? 21 A. Correct. 22 Q. Do you keep a personal file which relates to 23 Inspector Gilbert Howell where you have documents that 24 might not be found elsewhere in the city's records?</p>
Page 247	Page 249
<p>1 A. Yes. 2 Q. The management people that you consult with 3 make sure that you understand that? 4 A. Yes. 5 Q. Then at the captain's level, what do you do? 6 Do you have assessment boards? What do you do when 7 you are making selections from lieutenants to 8 captains? How does that happen? 9 A. It's just a -- it's considered a promoted 10 position, but it's actually technically appointed. 11 Q. Okay. 12 A. Appointed by the chief of police, anyone within 13 the lieutenant's rank, and there are thirteen 14 lieutenants on the Wilmington Department of Police 15 that are eligible to become a captain when you have a 16 captain's opening. 17 Q. A captain what? 18 A. When you have a captain's opening. 19 Q. But you don't go through any assessment within 20 the captains other than you as the chief exercising 21 your discretion? 22 A. That's correct. 23 Q. So these outside consultants or whatever 24 haven't come up with a process for you to follow when</p>	<p>1 A. No, other than what I submitted here. 2 Q. Right. You've given us that. 3 A. Right. 4 Q. But aside from that, information on him would 5 be in the disciplinary file? 6 A. Right. 7 Q. And attendance -- 8 A. Official department records. 9 Q. But there's nothing else that you have? 10 A. No. 11 Q. Has Director Mosley ever told you that he keeps 12 a personal file on Gilbert Howell? 13 A. No, he hasn't. 14 MR. NEUBERGER: Counsel, on request for 15 production number 14, you can just cross that off. 16 I'll withdraw that. Remember what I was asking for in 17 14? 18 MS. BUTCHER: Okay. 19 MR. NEUBERGER: I think you've given us all 20 that already. Or you can just say you've already done 21 it. 22 Counsel, in looking over the request for 23 production, there's just one or two, it looks like, 24 that I need a little more specificity. Everything</p>

Michael J. Szczerba

<p style="text-align: right;">Page 250</p> <p>1 else is going to be you already produced it or 2 whatever. So aside from these couple things we talked 3 about, I think you've complied. 4 MS. CHEEK: Okay. 5 BY MR. NEUBERGER: 6 Q. Have you done an evaluation of Gilbert Howell 7 since he has become the inspector? 8 A. No, I haven't. 9 Q. Have you been told not to do one of him? 10 A. No, I have not been told not to do one, no. 11 Q. So he's been inspector since November of 2005, 12 so it's been 12, 13 months or so. Is he due for one? 13 A. I would say so when we get those -- every 14 employee of the City of Wilmington gets an evaluation 15 from their supervisor and that comes through our 16 office of personnel for the city. 17 Q. So they are the ones who pull the trigger and 18 say it's time for evaluations? 19 A. Yes. I'll do one for my secretary. 20 Q. So you haven't heard anything from the 21 personnel department for doing one for him? 22 A. Correct. 23 Q. Until you hear from them, you are not supposed 24 to do one?</p>	<p style="text-align: right;">Page 252</p> <p>1 INDEX TO EXHIBITS 2 3 SZCZERBA EXHIBIT NO.: PAGE 4 1 A one-page copy of a 2005 Organization 5 Chart for the Wilmington Police 6 Department 12 7 2 A one-page copy of a document entitled 8 "Inspector Ranks Since 1978" 16 9 10 3 A ten-page copy of an Executive and 11 Managerial Employee Performance Appraisal 12 dated 9/22/04 for Captain Nancy Dietz 24 13 14 4 A ten-page copy of an Executive and 15 Managerial Employee Performance Appraisal 16 dated 9/2/04 for Captain Gilbert Howell 24 17 18 5 An eleven-page copy of an Executive and 19 Managerial Employee Performance Appraisal 20 dated 10/11/00 for Captain Nancy S. Dietz 52 21 22 6 A nine-page copy of an Executive and 23 Managerial Employee Performance Appraisal 24 dated 10/12/2000 for Captain Gilbert Howell 52 7 A nine-page copy of an Executive and Managerial Employee Performance Appraisal dated 10/11/2000 for Captain James Wright 52 8 A one-page copy of a City of Wilmington Organization Chart 59 9 A multipage copy of a Captains and Inspectors Bargaining Agreement dated 7/1/01 to 6/30/07 62 10 A multipage copy of Chapter III, Office of Uniformed Operations 69 11 A one-page copy of a document entitled "Police Pay by Rank" 95</p>
<p style="text-align: right;">Page 251</p> <p>1 A. Correct. 2 Q. Okay. Thanks. 3 MR. NEUBERGER: Let me check with my 4 cocounsel outside and we can wrap this up. 5 (A recess was taken at this time.) 6 MR. NEUBERGER: I don't have any other 7 questions at this time. Okay? 8 MS. CHEEK: Okay. 9 MS. BUTCHER: Okay. 10 (The deposition was then concluded at 11 4:05 p.m.) 12 ----- 13 14 INDEX TO TESTIMONY 15 16 MICHAEL J. SZCZERBA PAGE 17 Examination by Mr. Neuberger 2 18 19 ----- 20 21 22 23 24</p>	<p style="text-align: right;">Page 253</p> <p>1 SZCZERBA EXHIBIT NO. (Continued): PAGE 2 3 12 A one-page copy of an Informational 4 Bulletin dated Thursday, November 3, 5 2005, to All Personnel from Michael J. 6 Szczerba 96 7 13 A two-page copy of a document from the 8 Office of the University Registrar 110 9 10 14 A two-page copy of a document entitled 11 "Professional Experience and Assignments" 12 for Nancy S. Dietz 115 13 14 15 An eight-page copy of various 15 certificates 125 16 16 A multipage copy of certificates and 17 letters 127 18 19 17 A five-page copy of letters and 20 certificates 132 21 18 A two-page copy of a letter dated 22 March 8, 1989, to Guy Sapp from Peter N. 23 Letang 137 24 19 A multipage copy of an Executive and Managerial Employee Performance Appraisal for Captain Nancy Dietz 138 20 A three-page copy of attendance records for Nancy Dietz 167 21 22 21 A three-page copy of attendance records 23 for Gilbert Howell 167 24 22 An 11-page copy of documents, the first being a memo dated April 17, 2006, to James N. Mosley from Michael J. Szczerba 175 -----</p>

64 (Pages 250 to 253)

Page 254

REPLACE THIS PAGE
WITH THE ERRATA SHEET
AFTER IT HAS BEEN
COMPLETED AND SIGNED
BY THE DEPONENT.

Page 255

State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Kathleen White Palmer, Registered Professional Reporter and Notary Public, do hereby certify that there came before me on the 25th day of January, 2007, the deponent herein, MICHAEL J. SZCZERBA, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed into typewriting under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Kathleen White Palmer, RPR, RMR, CLR
Certification No. 149-RPR
(Expires January 31, 2008)

DATED: January 30, 2007

65 (Pages 254 to 255)

**SEALED
DOCUMENTS
(A1323 - 1388)**



CONFIDENTIAL PORTIONS

In The Matter Of:

Dietz v. Baker, et al.

C.A. # 06-256

Gilbert R. Howell

April 5, 2007

Wilcox & Fetzer, Ltd.
Phone: 302-655-0477
Fax: 302-655-0497
Email: depos@wilfet.com
Internet: www.wilfet.com

Dietz v. Baker, et al.

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CAPTAIN NANCY S. DIETZ,)	
)	
Plaintiff,)	
)	Civil Action
v.)	No.06-256
)	
MAYOR JAMES M. BAKER, individually)	
and in his official capacity as the)	
Mayor of the City of Wilmington,)	PAGES 33 to 98
and MAYOR AND COUNCIL OF)	ARE CONFIDENTIAL
WILMINGTON,)	
)	
Defendants.)	

Deposition of GILBERT R. HOWELL taken pursuant to notice at the law offices of The Neuberger Firm, Two East Seventh Street, Suite 302, Wilmington, Delaware, beginning at 10:10 a.m. on Thursday, April 5, 2007, before Kathleen White Palmer, Registered Merit Reporter and Notary Public.

APPEARANCES:

THOMAS S. NEUBERGER, ESQUIRE
THE NEUBERGER FIRM
Two East Seventh Street - Suite 302
Wilmington, Delaware 19801-3707
for the Plaintiff

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

www.wilfet.com

Dietz v. Baker, et al.

Page 2	Page 4
<p>1 APPEARANCES (Continued):</p> <p>2 REBECCA L. BUTCHER, ESQUIRE</p> <p>3 LANDIS RATH & COBB LLP</p> <p>4 919 Market Street - Suite 600</p> <p>5 Wilmington, Delaware 19899</p> <p>6 for the Defendant Mayor James M. Baker</p> <p>7 TERESA A. CHEEK, ESQUIRE</p> <p>8 YOUNG, CONAWAY, STARGATT & TAYLOR LLP</p> <p>9 1000 West Street</p> <p>10 The Brandywine Building - 17th Floor</p> <p>11 Wilmington, Delaware 19899-0391</p> <p>12 for the Mayor and Council of</p> <p>13 Wilmington</p> <p>14 ALSO PRESENT:</p> <p>15 CAPTAIN NANCY S. DIETZ</p> <p>16 -----</p> <p>17 GILBERT R. HOWELL,</p> <p>18 the witness herein, having first been</p> <p>19 duly sworn on oath, was examined and</p> <p>20 testified as follows:</p> <p>21 BY MR. NEUBERGER:</p> <p>22 Q. Could you state your full name, sir?</p> <p>23 A. Gilbert R. Howell.</p> <p>24 Q. When were you born?</p> <p>25 A. 3/21/51.</p> <p>26 Q. 3/21?</p> <p>27 A. Yes, sir.</p> <p>28 Q. All right. Thanks.</p>	<p>1 A. Yes, sir.</p> <p>2 Q. And you've given depositions in civil cases?</p> <p>3 Is that what you are telling me?</p> <p>4 A. Yes.</p> <p>5 Q. And then you've even testified in at least one</p> <p>6 federal court civil trial; is that right?</p> <p>7 A. Several.</p> <p>8 Q. Several. Okay.</p> <p>9 Now, you've taken an oath to tell the truth</p> <p>10 today. Do you understand the importance of that,</p> <p>11 telling the truth?</p> <p>12 A. Yes.</p> <p>13 Q. If I ask you a question today that you don't</p> <p>14 understand, just let me know and I'll be glad to</p> <p>15 rephrase it. Okay?</p> <p>16 A. All right.</p> <p>17 Q. If I ask you a question today that you don't</p> <p>18 know the answer to, I don't want you to guess. Just</p> <p>19 tell me you don't know and we'll go on to something</p> <p>20 else. Do you understand?</p> <p>21 A. Yes, sir.</p> <p>22 Q. If you need for me to repeat a question because</p> <p>23 you're having trouble understanding the question, just</p> <p>24 let me know and I'll be glad to repeat it. Is that</p>
Page 3	Page 5
<p>1 So you're about 56?</p> <p>2 A. Fifty-six, first day of spring.</p> <p>3 Q. There you go. Okay.</p> <p>4 And you are an African-American?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Have you ever had your deposition taken before?</p> <p>7 A. Plenty of times.</p> <p>8 Q. Many times. Okay. And I think recently you</p> <p>9 even testified in a federal court trial, didn't you?</p> <p>10 A. Yes, sir.</p> <p>11 Q. What was the name of that case?</p> <p>12 A. Kenneth Boyd.</p> <p>13 Q. Kenneth Boyd. Okay.</p> <p>14 So is it correct that you understand that</p> <p>15 if there's a trial in this case and you were called as</p> <p>16 a witness and said something different at trial than</p> <p>17 what I asked you about today, gave a different answer,</p> <p>18 I'd have the right to point that out to the judge or</p> <p>19 jury?</p> <p>20 A. Certainly.</p> <p>21 Q. You probably have testified in criminal cases,</p> <p>22 I'm sure --</p> <p>23 A. Yes.</p> <p>24 Q. -- over the years; right?</p>	<p>1 okay?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Are you on any medications or anything that</p> <p>4 might interfere with your remembering things about</p> <p>5 events several years ago?</p> <p>6 A. I'm on medication and it might not be the</p> <p>7 medication as opposed to just the age.</p> <p>8 Q. Well, I'll be 60 in a couple of weeks. I</p> <p>9 understand what you are saying. Okay.</p> <p>10 So whatever you are taking, it's nothing</p> <p>11 that's interfered with your memory before. Is that</p> <p>12 what you're telling me?</p> <p>13 A. That's correct.</p> <p>14 Q. And if you need a break, you let me know.</p> <p>15 Okay?</p> <p>16 A. Okay.</p> <p>17 Q. How about reviewing with me a couple things</p> <p>18 about where you grew up and where you went to school?</p> <p>19 Where were you born?</p> <p>20 A. Here in Wilmington, Delaware.</p> <p>21 Q. In Wilmington? Okay.</p> <p>22 Where did you go to elementary school?</p> <p>23 A. Well, we were like gypsies, so I went to quite</p> <p>24 a few. George Gray, Lore.</p>

2 (Pages 2 to 5)

Dietz v. Baker, et al.
Gilbert R. Howell

Page 6	<p>1 Q. So did I.</p> <p>2 A. Yes.</p> <p>3 Q. So you went to George Gray and Lore, Charles B.</p> <p>4 Lore; right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And how about junior high?</p> <p>7 A. P.S. duPont.</p> <p>8 Q. And how about high school?</p> <p>9 A. P.S. duPont.</p> <p>10 Q. P.S. Okay.</p> <p>11 So you would have graduated from P.S.</p> <p>12 around 1969 or so?</p> <p>13 A. Yes, but I quit.</p> <p>14 Q. You didn't finish, you mean?</p> <p>15 A. Yes.</p> <p>16 Q. Did you play any sports over there?</p> <p>17 A. Tennis.</p> <p>18 Q. Tennis? On those old courts behind the school?</p> <p>19 A. To the west of the school.</p> <p>20 Q. To the west of the school. Okay.</p> <p>21 So are you saying you left sometime during</p> <p>22 your senior year?</p> <p>23 A. Yes.</p> <p>24 Q. Did you join the service? Is that what</p>	Page 8	<p>1 Q. How long did you serve in North Dakota?</p> <p>2 A. I think it was about two years.</p> <p>3 Q. So did you do a two-year tour in Vietnam? A</p> <p>4 one-year tour in Vietnam?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Were you at a base?</p> <p>7 A. I was at Phan Rang.</p> <p>8 Q. And what was your assignment there?</p> <p>9 A. I was a combat soldier, security police. We</p> <p>10 were the only security for -- most of the Air Force</p> <p>11 bases in southeast Asia were either guarded by the</p> <p>12 Army or the Korean marines. At our particular base we</p> <p>13 had the sole responsibility of maintaining the combat</p> <p>14 structure for our base.</p> <p>15 Q. And after your tour in Vietnam, what happened?</p> <p>16 A. Well, they called -- after you serve in</p> <p>17 Vietnam, they give you a choice of any base that you</p> <p>18 want to do, I guess this is in lieu of -- because you</p> <p>19 served there in a combat zone.</p> <p>20 So my next assignment was -- my next</p> <p>21 assignment I was stationed in Mendenhall, England.</p> <p>22 Q. There was an Air Force Base there; right?</p> <p>23 A. That's correct.</p> <p>24 Q. Same kind of duties? Protecting the base?</p>
Page 7	<p>1 happened?</p> <p>2 A. Yes.</p> <p>3 Q. You served in -- was it --</p> <p>4 A. United States Air Force.</p> <p>5 Q. The Air Force?</p> <p>6 A. Yes.</p> <p>7 Q. Why don't you tell me where you were stationed,</p> <p>8 what different places they sent you?</p> <p>9 A. Well, first off we started in Lackland, Texas.</p> <p>10 That's where the United States Air Force has their</p> <p>11 training facility. My first assignment was in Minot,</p> <p>12 North Dakota. And in that assignment I was assigned</p> <p>13 to ballistic missiles.</p> <p>14 Q. Right.</p> <p>15 A. So what that entailed was we would be chopper'd</p> <p>16 out to the various missile sites and we lived there</p> <p>17 for a couple weeks and we would come in. Each missile</p> <p>18 site -- there was a mother missile sight. Each center</p> <p>19 site had ten ballistic missiles that we were</p> <p>20 responsible for.</p> <p>21 Q. Okay.</p> <p>22 A. Okay? After that, given the climate of Minot,</p> <p>23 North Dakota, I volunteered for Vietnam because it was</p> <p>24 nothing there in North Dakota but cold.</p>	Page 9	<p>1 A. Yes.</p> <p>2 Q. How long did you serve there?</p> <p>3 A. I was in England for about five years.</p> <p>4 Q. That's at least eight or nine years in the</p> <p>5 service. How long were you in the service?</p> <p>6 A. Eight and a half years.</p> <p>7 Q. So was England your last duty station?</p> <p>8 A. No, it was not.</p> <p>9 Q. Oh, okay.</p> <p>10 A. After I left England I was stationed in Warner</p> <p>11 Robins, Georgia. I was stationed in Roswell,</p> <p>12 New Mexico.</p> <p>13 Q. Roswell? Were you looking for flying saucers?</p> <p>14 A. Yeah. How about that?</p> <p>15 Q. Go ahead.</p> <p>16 A. And then my final base was Dover Air Force</p> <p>17 Base.</p> <p>18 Q. So after about eight and a half years you left</p> <p>19 the service?</p> <p>20 A. Yes.</p> <p>21 Q. So would that have been shortly before you went</p> <p>22 to the police academy?</p> <p>23 A. Yes. I got out in 1975, joined the police</p> <p>24 department in 1976.</p>

3 (Pages 6 to 9)

Dietz v. Baker, et al.
Gilbert R. Howell

Page 10	<p>1 Q. All right. Did you leave your junior or senior 2 year out of P.S.?</p> <p>3 A. It was ninth grade.</p> <p>4 Q. Oh, okay. So you enlisted in the service after 5 ninth grade?</p> <p>6 A. Yes.</p> <p>7 Q. I misunderstood you. Okay.</p> <p>8 A. Yes.</p> <p>9 Q. So it would have been around 1967 or so, 1967, 10 1966?</p> <p>11 A. Around '69.</p> <p>12 Q. '69? Okay. Well, okay.</p> <p>13 A. Around '69.</p> <p>14 Q. If you enlisted in '69 and you left in '75, 15 that would be like six years in the service. I think 16 you said you were eight and a half years in the 17 service.</p> <p>18 A. Eight and a half years. I went into the 19 service May 5th, 1969.</p> <p>20 Q. Okay. May 5th, and if we added eight and a 21 half years from that, that's when we know you left the 22 service. So eight and a half years, it might be 23 somewhere around 1977 or something like that you left 24 the service?</p>	Page 12	<p>1 Q. I think I've seen something that says that -- 2 well, first of all, let's go back here. It says 3 Wesley College, MBA program. Are you in the MBA 4 program at Wesley?</p> <p>5 A. Not now. I was in MBA college working on my 6 master's degree when I was offered this position.</p> <p>7 Q. Got you.</p> <p>8 A. Okay?</p> <p>9 Q. So you were promoted to inspector sometime the 10 end of 2005; is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. And you're saying that at that time before then 13 you had been taking some courses at --</p> <p>14 A. I was enrolled at Wesley College, yes.</p> <p>15 Q. -- Wesley College?</p> <p>16 Do they have a campus up here in New Castle 17 County or did you have to go to Dover?</p> <p>18 A. They had a campus at Corporate Commons.</p> <p>19 Q. Okay. And you were taking courses for an MBA 20 program?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And how many courses had you taken by the time 23 you had --</p> <p>24 A. Well, I had started because I went right in</p>
Page 11	<p>1 A. Yes. I did five years Reserves.</p> <p>2 Q. Okay. So you did Reserves, also?</p> <p>3 A. Yes.</p> <p>4 Q. After you left active duty --</p> <p>5 A. Yes.</p> <p>6 Q. -- you did Reserves?</p> <p>7 A. Yes.</p> <p>8 Q. So you started at the Wilmington Police Academy 9 and you stayed in the Reserves for five years?</p> <p>10 A. Yes.</p> <p>11 Q. Is that what you're saying? Okay. I got you.</p> <p>12 A. And within that time that I dropped out of 13 school, they had a program in the United States Air 14 Force which I embarked upon and I got my diploma from 15 Biddeford, Maine, so I had my high school diploma. 16 And that allowed me to attend certain college courses 17 while I was in England.</p> <p>18 Q. Right. So the Air Force provided you the 19 opportunity to complete your high school education?</p> <p>20 A. That's correct.</p> <p>21 Q. Then after you did that, you were able to take 22 some courses while you were in England? Is that what 23 you are telling me?</p> <p>24 A. Yes.</p>	Page 13	<p>1 from my bachelor's degree and I think I got into about 2 four or five classes.</p> <p>3 Q. About four or five classes.</p> <p>4 Confidentially your personnel file has been 5 produced in this case and the lawyers have seen it. 6 Okay? And the parties. But it's not a public 7 document or anything. And in a few minutes when we 8 start getting into your personnel records, we are 9 going to mark all the questions confidential. Okay? 10 So once again, they aren't public questions. Okay?</p> <p>11 But I noticed in the files that have been 12 turned over to us, I don't think I've seen any records 13 in the police department files about your attending 14 Wesley College.</p> <p>15 Have you ever submitted to them a 16 transcript or anything like that about the courses you 17 were enrolled in down there?</p> <p>18 A. No.</p> <p>19 Q. Okay. So no. Okay.</p> <p>20 A. At least I don't remember. At least I don't 21 remember submitting any documentation. But I sure got 22 a lot -- I got a lot of bills if you want to see them.</p> <p>23 Q. Well, before that, I think you've indicated you 24 got the equivalent of a college degree from somewhere;</p>

4 (Pages 10 to 13)

Dietz v. Baker, et al.
Gilbert R. Howell

Page 14	<p>1 right?</p> <p>2 A. No, not the equivalent.</p> <p>3 Q. You have a college degree?</p> <p>4 A. Yes.</p> <p>5 Q. We are not talking about high school?</p> <p>6 A. University of Phoenix.</p> <p>7 Q. Now, when did you get that degree?</p> <p>8 A. 2002 to '5. I had to go to Philadelphia three</p> <p>9 or four nights a week and -- and after I completed the</p> <p>10 program, business management --</p> <p>11 Q. Business management?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay.</p> <p>14 A. -- I was awarded a bachelor's degree.</p> <p>15 Q. Business management. Was it a Bachelor of</p> <p>16 Science in business management?</p> <p>17 A. Bachelor of Science.</p> <p>18 Q. Did you attend from 1999 to around 2003?</p> <p>19 A. Yes.</p> <p>20 Q. Now, once again, in looking at your personnel</p> <p>21 records, I haven't seen a copy of your Bachelor of</p> <p>22 Science degree from the University of Phoenix.</p> <p>23 Do you remember submitting that to the City</p> <p>24 of Wilmington?</p>	Page 16	<p>1 BY MR. NEUBERGER:</p> <p>2 Q. And then I think you've indicated that you also</p> <p>3 took some courses at Wilmington College sometime in</p> <p>4 your career?</p> <p>5 A. Yes.</p> <p>6 Q. What kind of courses would they have been?</p> <p>7 A. Courses in behavior science.</p> <p>8 Q. Behavioral science. Okay. Would that have</p> <p>9 been in the early 1990s?</p> <p>10 A. Around '89, '90, I would think.</p> <p>11 Q. It looks like you have an associate's degree in</p> <p>12 police science from DelTech. Is that true?</p> <p>13 A. Yeah, I have a dual, police science -- police</p> <p>14 science and criminal justice from DelTech.</p> <p>15 Q. Do you know whether you ever submitted that</p> <p>16 diploma to the Wilmington Police Department?</p> <p>17 A. No, but it's definitely in our records.</p> <p>18 Q. Do you have that diploma at home, too?</p> <p>19 A. Yeah, and I can give you the accompanying bills</p> <p>20 that go with it.</p> <p>21 Q. Could I ask you to try and make a copy of that</p> <p>22 and submit that to your lawyer, also?</p> <p>23 A. Sure.</p> <p>24 Q. All right. Thank you.</p>
Page 15	<p>1 A. No. I didn't submit any of those things.</p> <p>2 Q. They don't pay for continuing education or</p> <p>3 anything like that?</p> <p>4 A. No. Always a day late and a dollar short.</p> <p>5 When I finished my bachelor's degree, then CJC came up</p> <p>6 with a program that they provided law enforcement</p> <p>7 officers with financial funds. You passed a course,</p> <p>8 send in the course, they send you the money for the</p> <p>9 course.</p> <p>10 Q. But that wasn't in place when you were doing</p> <p>11 it, right?</p> <p>12 A. No, it was not.</p> <p>13 Q. Okay. At home or in your office do you have</p> <p>14 framed a diploma from the University of Phoenix</p> <p>15 somewhere?</p> <p>16 A. Sure.</p> <p>17 Q. Could I ask you to make a copy of that and give</p> <p>18 it to your lawyer?</p> <p>19 A. Sure.</p> <p>20 MR. NEUBERGER: Counsel, would you be kind</p> <p>21 enough to produce that for me a little later?</p> <p>22 MS. CHEEK: We'll take it under</p> <p>23 consideration.</p> <p>24 MR. NEUBERGER: Okay. Thank you.</p>	Page 17	<p>1 And then, of course, there's all sorts of</p> <p>2 like continuing courses you take as a law enforcement</p> <p>3 officer over the years. Is that a fair statement?</p> <p>4 A. Numerous.</p> <p>5 Q. Now, when did you enroll in the academy? Were</p> <p>6 you saying 1975? 1976? What would that have been?</p> <p>7 A. May 3rd, 1975 -- '76.</p> <p>8 Q. Have you been serving as a Wilmington police</p> <p>9 officer ever since?</p> <p>10 A. Yes.</p> <p>11 Q. So it's about 29 years now?</p> <p>12 A. This May it will be 31 years.</p> <p>13 Q. Now, what was your first assignment out of the</p> <p>14 academy? Patrolman somewhere?</p> <p>15 A. That's correct.</p> <p>16 Q. I'd just like to, whatever is easiest, take you</p> <p>17 from the academy through your assignments up to your</p> <p>18 present position or go backwards. Whatever is</p> <p>19 easiest. Could you just try to list for me your</p> <p>20 history within the department, your assignments?</p> <p>21 A. Yeah. Well, 31 years is a long time.</p> <p>22 Q. I understand.</p> <p>23 A. It might be quite -- I might get some wrong.</p> <p>24 Q. No. That's okay.</p>

5 (Pages 14 to 17)

Dietz v. Baker, et al.
Gilbert R. Howell

Page 18	<p>1 A. I was in Patrol Division, naturally, out of the</p> <p>2 academy and the first assignment I had was a plain</p> <p>3 clothes assignment working undercover.</p> <p>4 The next assignment I had was I was</p> <p>5 assigned to detectives, and I was there for 12, 13</p> <p>6 years.</p> <p>7 Q. Straight in detectives?</p> <p>8 A. Yes.</p> <p>9 Q. So that's like the Criminal Division and that's</p> <p>10 the Detective Division? Is that what they called it</p> <p>11 then?</p> <p>12 A. That's correct.</p> <p>13 Q. And your rank while you were in detectives, did</p> <p>14 it stay the same or did you eventually get promoted?</p> <p>15 A. From patrolman, they call it detective, but you</p> <p>16 are still a patrolman. But while there I did make</p> <p>17 sergeant.</p> <p>18 Q. Okay.</p> <p>19 A. And I did make lieutenant.</p> <p>20 Q. So while you were in detectives, you advanced</p> <p>21 to sergeant and lieutenant?</p> <p>22 A. Yes.</p> <p>23 Q. Do you remember approximately when you were</p> <p>24 promoted to sergeant, what year that might have been?</p>	Page 20	<p>1 Q. Got you. Okay.</p> <p>2 And did there come a time when you weren't</p> <p>3 in patrol or weren't in detectives in the Criminal</p> <p>4 Division? Did you progress to some other</p> <p>5 responsibility?</p> <p>6 A. Yes. I was assigned to community policing.</p> <p>7 Q. Do you remember when that might have started?</p> <p>8 A. Oh.</p> <p>9 Q. Do you remember how long you were in community</p> <p>10 police?</p> <p>11 A. Probably about two and a half years.</p> <p>12 Q. What other assignments have you had beyond</p> <p>13 community policing?</p> <p>14 A. Community policing, Internal Affairs.</p> <p>15 Q. Oh, okay. So you served in Internal Affairs?</p> <p>16 A. Yes.</p> <p>17 Q. What rank did you have when you were in</p> <p>18 Internal Affairs?</p> <p>19 A. Captain.</p> <p>20 Q. Oh, okay. Was it called Internal Affairs or</p> <p>21 Office of Professional Standards? What did they call</p> <p>22 it when you were --</p> <p>23 A. When I was there they called it Internal</p> <p>24 Affairs and they changed it to the Office of</p>
Page 19	<p>1 If you can.</p> <p>2 A. (No response.)</p> <p>3 Q. How about lieutenant? Do you remember when you</p> <p>4 became a lieutenant?</p> <p>5 A. To be accurate, no, I don't remember.</p> <p>6 Q. Okay.</p> <p>7 A. I mean, I have documentation that would be</p> <p>8 proof positive for you.</p> <p>9 Q. No. I know you were a sergeant and a</p> <p>10 lieutenant. Would you have been a lieutenant around</p> <p>11 1989, 1990, at least a lieutenant at that time?</p> <p>12 A. Yes, could be possible.</p> <p>13 Q. And there was some point in time when</p> <p>14 then-Sergeant Dietz was a sergeant under your command</p> <p>15 in your platoon or something?</p> <p>16 A. Yeah. A couple times after being promoted,</p> <p>17 while in the Detective Division, you come out, you</p> <p>18 serve a stint in the Patrol Division, and you go back,</p> <p>19 get promoted again, came out as a lieutenant.</p> <p>20 Q. Okay. So you're saying during that period of</p> <p>21 time you would have gone back in patrol, worked with</p> <p>22 the platoon or whatever, and then gone back into</p> <p>23 detectives? Is that what you are saying?</p> <p>24 A. Yes.</p>	Page 21	<p>1 Professional Standards.</p> <p>2 Q. Do you remember the years when you served as</p> <p>3 the captain in Internal Affairs?</p> <p>4 A. Probably started in 2005.</p> <p>5 Q. 2005?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. That's when I was promoted to captain.</p> <p>9 Q. I think it was the end of 2005 when you became</p> <p>10 an inspector. And so you're saying was your last</p> <p>11 assignment before you became inspector the head of</p> <p>12 Internal Affairs or was it something else?</p> <p>13 A. Say that again, please.</p> <p>14 Q. What assignment did you have when you were</p> <p>15 promoted to inspector?</p> <p>16 A. Then that's when I was promoted to Uniform</p> <p>17 Operations inspector.</p> <p>18 Q. Right. That was in the end of 2005?</p> <p>19 A. Yes.</p> <p>20 Q. And what assignment did you have as captain</p> <p>21 just before you were promoted?</p> <p>22 A. Internal Affairs.</p> <p>23 Q. Okay.</p> <p>24 A. No. I'm sorry. I'm sorry. It was Records</p>

6 (Pages 18 to 21)

Dietz v. Baker, et al.
Gilbert R. Howell

Page 22	<p>1 Division.</p> <p>2 Q. Got you.</p> <p>3 A. Records Division.</p> <p>4 Q. Before records, is that when you were in</p> <p>5 Internal Affairs?</p> <p>6 A. Yes.</p> <p>7 Q. Got you. Okay.</p> <p>8 Do you remember how long you served in</p> <p>9 records?</p> <p>10 A. Approximately three years.</p> <p>11 Q. Before records, were you in Internal Affairs?</p> <p>12 A. Yes.</p> <p>13 Q. About how long did you serve in Internal</p> <p>14 Affairs?</p> <p>15 A. About a year and a half. Somewhere squeezed in</p> <p>16 the middle of there I was the commanding officer of</p> <p>17 community policing.</p> <p>18 Q. And by "commanding officer," what rank did you</p> <p>19 have?</p> <p>20 A. Captain.</p> <p>21 Q. Who was your chief when you were serving in</p> <p>22 Internal Affairs?</p> <p>23 A. Boykin.</p> <p>24 Q. Did Chief Boykin assign you to Internal</p>	Page 24	<p>1 Q. And then he was replaced by Chief Boykin?</p> <p>2 A. Yes.</p> <p>3 Q. And you're saying that you got promoted while</p> <p>4 Pratcher was still there; right?</p> <p>5 A. Yes.</p> <p>6 Q. And then Boykin came in shortly after; right?</p> <p>7 A. Yes.</p> <p>8 Q. I understand.</p> <p>9 Now, records, was that called Support</p> <p>10 Services commander? Is that the official title of it?</p> <p>11 A. Yes.</p> <p>12 Q. Now, in records, was part of your</p> <p>13 responsibility sending Wilmington information into the</p> <p>14 DelJIS system down in Dover?</p> <p>15 A. Not per se me, but that was one of the</p> <p>16 functions that was performed in the division.</p> <p>17 Q. Right. So people working under your command</p> <p>18 had to perform that function?</p> <p>19 A. That's correct.</p> <p>20 Q. At the end of 2005, weren't there public</p> <p>21 criticisms of the fact that inaccurate DelJIS</p> <p>22 reporting was coming from the City of Wilmington that</p> <p>23 was affecting the crime statistics for the State of</p> <p>24 Delaware?</p>
Page 23	<p>1 Affairs?</p> <p>2 A. Yes.</p> <p>3 Q. Who was the chief who promoted you to captain?</p> <p>4 A. Sam Pratcher.</p> <p>5 Q. Your first assignment as a captain, what was</p> <p>6 it?</p> <p>7 A. Internal Affairs.</p> <p>8 Q. Okay. Well, I think you said that Pratcher</p> <p>9 promoted you to captain; right?</p> <p>10 A. Yeah. And my first assignment without a doubt</p> <p>11 when I made captain was Internal Affairs.</p> <p>12 Q. So was Pratcher the chief at the time you were</p> <p>13 in Internal Affairs or was it Boykin?</p> <p>14 A. Well, chief made me captain. Chief Pratcher,</p> <p>15 he promoted me, and during that period of time there</p> <p>16 was some riff between Chief Pratcher and certain</p> <p>17 situations that was going on, and he stepped down and</p> <p>18 Boykin took his place.</p> <p>19 Q. Oh, right, right. This was when Jim Sills was</p> <p>20 mayor?</p> <p>21 A. Yes.</p> <p>22 Q. And then there came a time that Chief Pratcher</p> <p>23 stepped down; right?</p> <p>24 A. Yes.</p>	Page 25	<p>1 A. No.</p> <p>2 Q. Do you remember that?</p> <p>3 A. I remember that, but it wasn't inaccurate.</p> <p>4 Q. Not inaccurate. They just hadn't got the</p> <p>5 reports in yet?</p> <p>6 A. That's correct.</p> <p>7 Q. Is that fair to say?</p> <p>8 A. Before I took over Records Division, they</p> <p>9 terminated three of the workers there because within</p> <p>10 the department they had decided to go to a paperless</p> <p>11 department, so, therefore, three persons was</p> <p>12 terminated from Support Services because they thought</p> <p>13 this paperless system was just going to be the answer</p> <p>14 to everything. It should have did the job analysis</p> <p>15 because it never worked and, in fact, that because</p> <p>16 they were down three people, the work just escalated.</p> <p>17 And it was a lot of work that didn't get done.</p> <p>18 Q. So you're saying that happened before you took</p> <p>19 over in Support Services as commander?</p> <p>20 A. It was a little bit while I was there.</p> <p>21 Q. Well, you took over as Support Services</p> <p>22 commander in the year 2001; is that correct?</p> <p>23 A. I would say so. Around that time.</p> <p>24 Q. And are you saying that during your whole time</p>

7 (Pages 22 to 25)

Dietz v. Baker, et al.
Gilbert R. Howell

Page 26	<p>1 commanding Support Services there were difficulties in</p> <p>2 getting the information into the DelJIS system?</p> <p>3 A. Yes. We were -- we didn't have enough</p> <p>4 personnel to handle that particular job aspect. And</p> <p>5 on top of that, they took away three. So that made</p> <p>6 things worse.</p> <p>7 Q. At the end of 2005 you were promoted to</p> <p>8 inspector; right?</p> <p>9 A. Yes.</p> <p>10 Q. So I think you're saying that throughout your</p> <p>11 term as the captain responsible for Support Services</p> <p>12 from 2001 to 2005, your office wasn't able to fulfill</p> <p>13 its duties in sending information into the DelJIS</p> <p>14 system?</p> <p>15 MS. CHEEK: Objection to form.</p> <p>16 A. 1904, 1905 records were not supplied for</p> <p>17 DelJIS.</p> <p>18 Q. So I think you're saying -- you might have</p> <p>19 misspoke. The year 2004 and the year 2005 records had</p> <p>20 not been submitted to DelJIS? Is that what you are</p> <p>21 saying? You said 19 --</p> <p>22 A. Oh, yeah. 2004, 2005, right.</p> <p>23 Q. So those are the two years that DelJIS didn't</p> <p>24 get the information from your office?</p>	Page 28	<p>1 Communications Division reports to me, Support</p> <p>2 Services reports to me, Patrol Division, and Special</p> <p>3 Operations.</p> <p>4 Q. So the Community Services Division reports</p> <p>5 directly to you; right?</p> <p>6 A. Mm-hmm.</p> <p>7 Q. And you were the captain there once; right?</p> <p>8 A. Yes.</p> <p>9 Q. The Support Services Division reports to you</p> <p>10 and you were the captain there; right?</p> <p>11 A. Yes.</p> <p>12 Q. Then the patrol function reports to you?</p> <p>13 A. Yes.</p> <p>14 Q. Approximately how many uniformed officers does</p> <p>15 Wilmington have at this time, today?</p> <p>16 A. We have about 329.</p> <p>17 Q. Did you say 329?</p> <p>18 A. Yes.</p> <p>19 Q. How many officers are there in the patrol</p> <p>20 function that is under you?</p> <p>21 A. I would say about 310.</p> <p>22 Q. Now Special Ops., Special Operations, what is</p> <p>23 Special Operations?</p> <p>24 A. Special Operations is the division that deals</p>
Page 27	<p>1 A. That's right.</p> <p>2 Q. Let's just go back.</p> <p>3 Before that you were captain in Community</p> <p>4 Affairs and Operations; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Were you the captain in Community Affairs and</p> <p>7 Operations before or after you were the captain in</p> <p>8 Internal Affairs?</p> <p>9 A. Before.</p> <p>10 Q. So between Community Affairs and Operations and</p> <p>11 Support Services, that's when you served in Internal</p> <p>12 Affairs; is that correct?</p> <p>13 A. Yes. That was the first assignment that I had</p> <p>14 when I was promoted to captain.</p> <p>15 Q. In community affairs, approximately how many</p> <p>16 officers would you have been supervising?</p> <p>17 A. (No response.)</p> <p>18 Q. More or less than 50?</p> <p>19 A. Well, I had the lieutenants and each lieutenant</p> <p>20 had a platoon, so it was around 50.</p> <p>21 Q. Now, as the uniformed operations inspector --</p> <p>22 A. Yes.</p> <p>23 Q. -- what functions reported to you?</p> <p>24 A. Uniform -- Uniform Service Division, so the</p>	Page 29	<p>1 with Special Operations. Something would come up and</p> <p>2 they would handle it, affairs, community affairs,</p> <p>3 functions like that, or under community affairs is</p> <p>4 Traffic Division and a lot of the details that's</p> <p>5 involved in Special Operations entails traffic. So</p> <p>6 traffic is also a subdivision of Special Operations.</p> <p>7 Q. Okay. So Special Operations isn't like the</p> <p>8 SWAT team or something like that?</p> <p>9 A. No.</p> <p>10 Q. Where is the Criminal Division in all of this?</p> <p>11 A. That's on the other side of the house. That's</p> <p>12 on the uniformed -- I mean on the investigative side</p> <p>13 of the house.</p> <p>14 Q. So the whole Criminal Division is over on the</p> <p>15 investigative side of the house?</p> <p>16 A. That's correct. Along with HR.</p> <p>17 Q. HR is over on that side, too?</p> <p>18 A. Yes, sir. Along with vice.</p> <p>19 Q. Vice.</p> <p>20 A. And along with Office of Professional</p> <p>21 Standards.</p> <p>22 Q. And the SWAT team is over on that side, too?</p> <p>23 A. Yes.</p> <p>24 Q. But traffic is over on your side?</p>

8 (Pages 26 to 29)


Dietz v. Baker, et al.
Gilbert R. Howell

Page 30	Page 32
<p>1 A. Yes.</p> <p>2 Q. And patrol is over on your side?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Thanks.</p> <p>5 Oh, here is something. I want to show you,</p> <p>6 this is a confidential page, it's page D-3175. It</p> <p>7 looks like it was prepared by you. Why don't you take</p> <p>8 a quick look at that.</p> <p>9 A. (The witness reviews the document.)</p> <p>10 MS. CHEEK: I'm going to object because</p> <p>11 this is not a complete document.</p> <p>12 MR. NEUBERGER: No. I understand.</p> <p>13 BY MR. NEUBERGER:</p> <p>14 Q. Here is the whole document if you want to look,</p> <p>15 but I'm just going to ask you if this is something you</p> <p>16 prepared.</p> <p>17 A. Yes, sir.</p> <p>18 Q. Right. Is that something you prepared?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And was it accurate when you prepared it?</p> <p>21 A. Yes, sir.</p> <p>22 Q. This page here, 3175, it lists a bunch of</p> <p>23 assignments you had and gives some dates. Do you see</p> <p>24 that?</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 PAGES 33 TO 98 OF THIS TRANSCRIPT</p> <p>10</p> <p>11 HAVE BEEN DEEMED TO BE CONFIDENTIAL</p> <p>12</p> <p>13 BY THE PARTIES AND CAN BE FOUND IN A</p> <p>14</p> <p>15 SEALED ENVELOPE AT END OF THIS</p> <p>16</p> <p>17 TRANSCRIPT.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 31	Page 33
<p>1 A. Yes.</p> <p>2 Q. So would those dates be accurate?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Thanks.</p> <p>5 A. More accurate than --</p> <p>6 Q. Your memory today?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Thanks.</p> <p>9 MR. NEUBERGER: Counsel, what I would like</p> <p>10 to do is I'm going to start going into his personnel</p> <p>11 records, so why don't we seal the deposition from this</p> <p>12 point forward? Is that okay?</p> <p>13 MS. CHEEK: Yes.</p> <p>14 MS. BUTCHER: Yes.</p> <p>15 -----</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

9 (Pages 30 to 33)

**SEALED
DOCUMENTS
(A1399 - 1414)**

Dietz v. Baker, et al.
Gilbert R. Howell - CONFIDENTIAL

<p style="text-align: right;">Page 98</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">-----</p>	<p style="text-align: right;">Page 100</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">REPLACE THIS PAGE WITH THE ERRATA SHEET AFTER IT HAS BEEN COMPLETED AND SIGNED BY THE DEPONENT.</p>
<p style="text-align: right;">Page 99</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">INDEX TO TESTIMONY</p> <p>GILBERT R. HOWELL PAGE</p> <p>Examination by Mr. Neuberger 2</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">INDEX TO EXHIBITS</p> <p>(No exhibits marked for identification.)</p> <p style="text-align: center;">-----</p>	<p style="text-align: right;">Page 101</p> <p>1 State of Delaware) 2) 3 New Castle County) 4 5 6 CERTIFICATE OF REPORTER 7 8 I, Kathleen White Palmer, Registered Professional Reporter and Notary Public, do hereby 9 certify that there came before me on the 5th day of April, 2007, the deponent herein, GILBERT R. HOWELL, 10 who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions 11 asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter 12 transcribed into typewriting under my direction. 13 I further certify that the foregoing is a true and correct transcript of the testimony given 14 at said examination of said witness. 15 I further certify that I am not counsel, attorney, or relative of either party, or otherwise 16 interested in the event of this suit. 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">  Kathleen White Palmer, RPR, RMR, CLR Certification No. 149-RPR (Expires January 31, 2008) </p> <p>DATED: April 9, 2007</p>

26 (Pages 98 to 101)

NANCY S. DIETZ

300 N. Walnut Street, Wilmington, Delaware 19801 (302) 576-3193

PROFESSIONAL EXPERIENCE AND ASSIGNMENTS

1997 – PRESENT

Captain

- Commanding Officer, Human Resources Division 11/05
- Commanding Officer, Office of Professional Standards 10/01
- Commanding Officer, Criminal Investigations Division 3/97

1991 – 1997

Lieutenant

- Commander of Criminal Investigations Platoon 6/95
- Deputy Commander of Human Resources Division 2/93
- Commander of Patrol Platoon in Uniformed Services 11/91

1989 – 1991

Sergeant

- Investigator for the Office of Professional Standards 10/90
- Supervisor of Patrol Platoon Squad in Uniformed Services 7/89

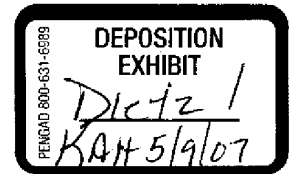
1980 – 1989

Patrol Officer / Detective

- Investigator in the Criminal Investigations Division 5/84
- Investigator in the Drug, Organized Crime & Vice Division 81'
- Patrol Officer in the Patrol Division 6/80

EDUCATION

2005	<i>Wilmington College</i>	New Castle, De.
	Currently enrolled in Graduate Degree Program	
	Leadership & Administration in Administration of Justice	GPA 4.0
1975 – 1979	<i>Pennsylvania State University</i>	State College, Pa.
	Bachelor of Science Degree, Administration of Justice	
1987	<i>FBI National Academy</i>	Quantico, Virginia
	University of Virginia	GPA 3.93



D02241

Confidential

A1416

PAST SPECIAL ASSIGNMENTS / POSITIONS

- Commander, 83rd Wilmington Police Academy
- Commanding Officer, 91st Wilmington Police Academy 06'
- Chairperson, United Way Campaign for Wilmington Police
- Chairperson, Special Olympics Campaign & Torch Run
- Team Member, Crisis Management Hostage Negotiation Team 85' - 90'
- Team Leader, Crisis Management Hostage Negotiation Team 90' - 97'
- Member, Governor's Task Force for the Homeless 9/91' (Castle)
- Attorney General's Special Investigations Unit 86' (Oberly)
- Representative, Juvenile Justice Advisory Board
- Representative, Child Death Review Commission
- Representative, Children's Advocacy Center
- Representative, Child Abuse Intervention Committee
- Representative, U.S. Attorney's Integrated Firearms Reduction Committee
- Representative, U.S. Attorney's Nuisance Property Committee
- Representative, Justice of the Peace Court Liaison 98'
- Representative, Governor's Task Force, Operation Safe Streets
- Past President, F.B.I. National Academy Associates, Maryland/De. Chapter
- Past Secretary/Treasurer, F.B.I. National Academy Associates, Maryland/De. Chapter
- Certified Polygraph Examiner in 1989

CURRENT POSITIONS / MEMBERSHIPS

- YMCA Resource Center, Board Member
- Senator Biden's Military Service Academy Selection Committee
- Big Brother / Big Sister Organization, United Way
- Delaware Council on Crime and Justice
- Delaware Association of Police
- Pennsylvania State University Alumni Association
- International Association of Police Chiefs
- F.B.I. National Academy Associates, Maryland/Delaware Chapter
- Guest Speaker, Wilmington College, Women in Criminal Justice 5/05
- Instructor, Wilmington Police Academy
- Guest Instructor, University of Delaware, Continuous Education 3/05

AWARDS

- Kiwanis Outstanding Service Award 82'
- Police Marksmanship Distinguished Shooting Award 80'
- 9 Department Medals
- 27 Police, Citizen and Organization Commendations

D02242

Confidential

A1417

- 3 Resolutions from Wilmington City Council

PERSONAL

Married to Marlyn Dietz, has two children, Katie 17 years old, & Madison, 13 years old.

D02243

Confidential

A1418

**SEALED
DOCUMENTS
(A1419 - 1439)**

18,24,35,40). Interestingly, a female has never held the rank of Inspector in the WPD. (Compl. & Ans. ¶85; Szczerba 23-4; Baker 27; Montgomery 64; Defendants Inter. Response #1 p.3-4 and p.4-5; Szczerba Ex. 2).

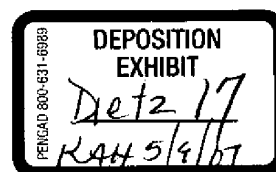
In January of 2006, plaintiff learned that she was the victim of racial discrimination for promotion to the rank of Inspector both in 2001 and 2005. After giving deposition testimony in another lawsuit, Szczerba approached plaintiff to explain that in October of 2005, he had specifically recommended her to Baker for promotion to Uniformed Operations Inspector. (Szczerba 237; Dietz Inter. Response #2 p. 1; Szczerba deposition testimony in Boyd v. Wilmington Police Department, 05-178-KAJ, January 23, 2006, p.5-6). Plaintiff then inquired as to why she did not receive the promotion. Szczerba stated Baker's appointment was based on race only and it had nothing to do with her personally or her qualifications. His explanation was simply that it was a black position.

Fuentes Prong 2 - The Weight of the Evidence Proves Discrimination.

Through Baker's own admissions and testimony of those who worked closely with him during the time period the promotion decisions at issue were made, the record contains abundant evidence which a reasonable jury can accept to conclude that the denial of these two promotions were discriminatory.

Both circumstantial and direct evidence of illicit intent exists, such as:

1. Baker admitted to then FOP Vice-President George Collins in October of 2005 that the Inspector position had to be given to a black. (Collins 9,11).
2. Szczerba testified that Public Safety Director James Mosley inquires into the race of every candidate for promotion and with regard to any transfers. (Szczerba 208-9). Baker admits Mosley may be inquiring into the race of these candidates to promote diversity in the workforce. (Baker 30,37; Montgomery 24).
3. Baker admits that department decision makers are to consider diversity when promoting candidates who are of equal caliber, especially when the existing positions are filled by all whites. (Baker 33-35; Montgomery 11-17).
4. Baker admits that he took into consideration various recommendations from the community and City Council members in appointing Howell to Inspector. (Baker 72-74). However, Baker also admitted that the recommendations for Howell came from the



Dietz 20
RHH 5/9/07

Name	Title	Dates of Active Duty	Race
Keith Ash	Inspector of Uniformed Operations	3/7/97 to 2/20/98	African-American
Michael A. Boykin	Inspector of Investigative Operations	11/4/95 to 3/23/97	African-American
Charles E. Bryan, III	Inspector of Operations	12/15/78 to 9/28/81	White
Lawrence H. Curtis	Inspector of Operations	10/14/81 to 4/29/83	White
R. Michael Dixon	Inspector of Uniformed Operations	2/5/93 to 9/22/95	African-American
John G.P. Doherty	Inspector of Services	1/29/83 to 6/16/85	White
John G.P. Doherty	Inspector of Staff Inspections	6/17/85 to 6/6/86	White
Martin Donohue	Inspector of Investigative Operations	7/31/99 to present	White
Charles A. Dougherty	Inspector of Administration	5/16/83 to 6/30/89	White
William Draper	Inspector of Administration	5/8/89 to 10/28/94	White
Stanley Friedman	Inspector of Administration	4/3/79 to 6/30/83	White
Preston J. Hickman	Inspector of Community Services	9/30/87 to 12/27/88	African-American
Preston J. Hickman	Inspector of Operations	12/28/88 to 7/7/89	African-American
Gilbert Howell	Inspector of Uniformed Operations	10/29/05 to present	African-American
Ronald Huston	Inspector of Investigative Operations	5/27/99 to 7/30/99	White
John W. Johnson	Inspector of Staff Inspections	10/14/81 to 6/16/85	African-American
John W. Johnson	Inspector of Community Services and Community Affairs	6/17/85 to 8/11/85	African-American
John W. Johnson	Inspector of Uniformed Services	8/12/85 to 3/29/87	African-American
John W. Johnson	Inspector of Community Services	3/30/87 to 7/31/87	African-American

Richard LaFashia	Inspector of Administration	2/8/89 to 5/12/89	White
Eugene G. Maloney	Inspector of Services	10/26/75 to 2/15/81	White
Eugene G. Maloney	Inspector of Staff Inspections	2/16/81 to 10/13/81	White
Eugene G. Maloney	Inspector of Services	10/14/81 to 7/1/83	White
Kenneth Miles	Inspector of Services	7/6/78 to 10/13/81	African-American
John T. Murray	Inspector of Investigative Operations	3/22/97 to 5/26/99	White
Donald Payne	Inspector of Operations	5/16/83 to 8/11/85	White
Donald Payne	Inspector of Criminal Investigations	8/12/85 to 3/29/87	White
Donald Payne	Inspector of Operations	3/30/87 to 9/13/87	White
Samuel D. Pratcher	Inspector of Operations	7/3/89 to 1/7/93	African-American
Guy Sapp	Inspector of Operations	9/30/87 to 12/21/88	White
James Stallings	Inspector of Uniformed Operations	2/20/98 to 2/16/01	African-American
John P. Vignola	Inspector of Investigative Operations	10/29/94 to 11/3/95	White
John P. Vignola	Inspector of Uniformed Operations	11/4/95 to 3/7/97	White
James Wright	Inspector of Uniformed Operations	2/17/01 to 10/28/05	African-American

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CAPTAIN NANCY S. DIETZ,

Plaintiff,

V.

MAYOR JAMES M BAKER,
individually and in his official capacity
as the Mayor of the City of Wilmington,
and the CITY OF WILMINGTON, a
municipal corporation,

Defendants.

C.A.No.06-256-SLR

**PLAINTIFF'S ANSWERS AND OBJECTIONS TO DEFENDANT JAMES BAKER'S
FIRST SET OF INTERROGATORIES**

Plaintiff, by and through her attorneys, hereby objects to Defendant James Baker's First Set of Interrogatories Directed to Plaintiff ("Interrogatories") in accordance with the numbered paragraphs as set forth below. Plaintiff reserves the right to amend or supplement the responses contained herein as may be necessary or appropriate in the future.

Discovery has not concluded in this case. Plaintiff reserves the right to supplement her responses at a later time as discovery is completed.

GENERAL OBJECTIONS

1. Plaintiff objects to Defendant's Interrogatories to the extent they purport to impose an obligation on Plaintiff or to require the disclosure of information in a manner that exceeds the requirements of Rules 26 and 33 of the Federal Rules of Civil Procedure or the case law in the Third Circuit.

2. Plaintiff objects to Defendant's Interrogatories to the extent they seek the disclosure of information that is protected from disclosure by the attorney-client privilege or other privilege, and/or the work product doctrine, and/or the protection afforded by attorney-client work product, and/or the deliberative process, and/or the protection afforded mental impressions, conclusions, opinions, legal research, or legal theories of one or more attorneys and/or representatives of the Plaintiff concerning the litigation, and/or any other applicable privileged or doctrine.

3. Plaintiff objects to Defendant's Interrogatories to the extent they seek the disclosure of information that is not relevant to the subject matter involved in the pending action, will not be admissible at trial, and is not reasonably calculated to lead to the discovery of admissible evidence.

4. Plaintiff objects to Defendant's Interrogatories to the extent they request information or documents which constitute or contain sensitive and non-public business, medical patient, medical credentials, personal, income tax or other confidential information. Plaintiff will only produce such information, if not subject to any other objections, pursuant to an appropriate stipulation and order of confidentiality.

5. Plaintiff objects to Defendant's Interrogatories to the extent they request personal or confidential information. Plaintiff will only produce such information, if not subject to any other objections, pursuant to an appropriate stipulation and order of confidentiality.

6. Plaintiff objects to Defendant's Interrogatories to the extent they do not specify a reasonable time or place of production or the manner of making the inspection in accordance with Fed.R.Civ.P. 34(b). Plaintiff will produce the indicated documents for inspection and

copying at a time and location to be agreed upon by the parties.

7. Plaintiff objects to Defendant's Interrogatories to the extent they seek discovery of agreements with third parties (not parties to or related to this action) which may be subject to nondisclosure and either cannot be produced without agreement of a third party or cannot be produced without an appropriate stipulation and order of confidentiality.

8. Plaintiff objects to Defendant's Interrogatories to the extent they request or call for information that is unduly burdensome to produce, are oppressive, and/or seek to require the making of an unreasonable investigation on Defendant's behalf or the discovery it seeks is already in the possession, custody or control of Defendants.

9. Plaintiff objects to Defendant's Interrogatories to the extent that Defendant's definitions and instructions cause each interrogatory to ask multiple questions.

10. Plaintiff objects to any and all Interrogatories to the extent that they request or call for the manner or method of proof at any hearing.

11. Plaintiff objects to Defendant James M. Baker's Interrogatories directed to Plaintiff to the extent they violate paragraph 2(b) of the Rule 16 Scheduling Order in this case, which provides that each party may not propound more than 50 interrogatories to any other party. Interrogatory No. 2 consists of 12 subparts because it asks for two categories of information (that is (1) identify all communications related to the Actions between You and any other party to this action or their Affiliates and (2) describe all communications related to the Actions between You and any other party to this action or their Affiliates) for each of at least three communications. In addition, because your definition of "identify" with respect to a natural person (definition no. 12) requires three more categories of information (that is, (i)state the full person's full name; (ii) state

the person's present or last known business and residence address; and (iii) state the person's present or last known position and business affiliations), there are in effect three additional subparts for each at least three communications. Interrogatory No. 3 has 42 subparts because it asks for identification with respect to a natural person (which, as stated previously, is defined as asking for three categories of information) for each of fourteen persons identified in Plaintiff's Rule 26 Initial Disclosures. Interrogatory No. 6 has eight subparts because your definition of "identify" when used in reference to an event or occurrence (definition no. 13) requires eight categories of information (that is, (a) state the time and date of the event or occurrence; (b) state the nature of the event or occurrence; (c) specify the place where the event or occurrence took place; (d) identify every participant in the event or occurrence; (e) identify every non-participating witness to the event or occurrence; (f) identify the person or persons of whom each and every participant and witness was a representative or agent; (g) identify each and every document, whether predating, postdating or contemporaneous with the event or occurrence, describing, referring to, used in connection with, or otherwise relating to such event or occurrence; and (h) describe the event or occurrence and, if it was a meeting, communication or statement, state the substance of the matters communicated or discussed. Interrogatory No. 7 has two subparts (that is, (a) identify and (b) describe all facts that support such contention). Interrogatory No. 8 has two subparts (that is, (a) identify and (b) describe all facts that support such contention). Interrogatory No. 13 has at least three subparts. There are also seven other interrogatories, for a total of more than 76 interrogatories, including subparts.

12. Plaintiff's responses that follow are without prejudice to and are not a waiver of the foregoing general objections.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Plaintiffs object to Defendant's definitions and instructions insofar as they impose burdens on Plaintiffs beyond that required by the Federal Rules of Civil Procedure, or the case law in the Third Circuit.

2. Plaintiff objects to Defendant's definitions and instructions regarding claims of privilege insofar as they impose burdens on Plaintiff beyond that required by the Federal Rules of Civil Procedure or the applicable case law.

3. Plaintiff objects to Defendant's definitions and instructions to the extent they imply an obligation to supplement answers to Discovery which impose upon plaintiff an obligation beyond that required by Fed.R.Civ.P. 26(e).

4. Plaintiff objects to Defendant's definitions and instructions insofar as they would require counsel for plaintiff to disclose their mental impressions, conclusions, opinions, or legal theories in violation of Fed.R.Civ.P. 26(b)(3).

CONDITIONS

1. Through this response, Plaintiff does not waive but rather preserves:

A. All objections as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose in subsequent proceedings.

B. The right to object to the use of any information which may be provided, or the subject matter thereof, in any subsequent proceedings or the trial of this or any other action on any grounds.

C. The right to object on any ground at any time to further discovery proceedings involving or relating to the subject matter of these Interrogatories.

D. The right at any time to revise, correct, supplement, clarify or amend this response in accordance with the Federal Rules of Civil Procedure.

2. All responses to Interrogatories are based on Plaintiff's best understanding of the Interrogatories and/or the terms used therein. Such responses cannot properly be used as evidence except in the context in which plaintiff understood the Interrogatories and/or the terms used therein.

3. These responses are not a representation or concession as to the relevance and/or relationship of the information to this action.

**ANSWERS AND OBJECTIONS TO SPECIFIC INTERROGATORIES
(IN ADDITION TO AND SUBJECT TO ALL THE FOREGOING OBJECTIONS)**

1. Identify each person answering these interrogatories on Your behalf.

Answer: Plaintiff, Captain Nancy S. Dietz.

2. Identify and describe all communications related to the Action between You and any other party to this Action or their affiliates.

Answer: Objection. Overbroad, burdensome, not designed to lead to the discovery of admissible evidence. Without waiving the objection:

See all written communications found in D00001 through D03184 and P00001 through P00353.

In October of 2005, prior to the official announcement of Howell's promotion to Uniformed Operations Inspector in November, plaintiff requested a meeting with Public Safety Director Mosley. (Szczerba 232; Szczerba Ex. 12). Plaintiff made this request through the proper chain of command by requesting permission from her superior officer, Chief Szczerba.

(Szczerba 232,234-5). Plaintiff began hearing rumors circulating through the WPD that then Captain Howell was bragging about being promoted to Inspector. Plaintiff also heard rumors that the selection of Howell was made based on race because a black inspector was retiring, therefore the replacement had to be black. (Szczerba 233-4). As a result, plaintiff approached Szczerba regarding these rumors and requested a meeting with Mosley. (Mosley 39-40; Szczerba 234-5).

In this meeting, Mosley admitted to plaintiff that since his appointment in 2001 there has been a minority serving as the Uniformed Operations Inspector. (Mosely 41-42). Additionally, Mosley stated that when Baker made his selection, he argued against it. (Mosley 29,35-36,48). Also during this meeting, Mosley discussed with plaintiff the idea of meeting with the mayor directly regarding the promotion. (Mosley 40-41). Accordingly, on October 27, 2005, plaintiff met with Baker and Mosley at the Hotel DuPont for a breakfast meeting. (Baker 59; Mosley 40-41; D03181). To ensure Baker was aware of her experience, background and overall qualifications for promotion to the rank of Inspector, plaintiff brought a copy of her resume. (Szczerba Ex. 14). Baker merely commented on her resume and stated that it was very impressive and how all the staff was considered qualified.

3. Identify each person You expect to call as a witness at the trial of the Action, and with respect to each such person, state the substance of the facts to which each such person is expected to testify.

Answer: Objection. Delaware Local Rule 16.4(d)(7) does not require the disclosure of trial witness until three days prior to trial.

4. State the basis for Your contention in paragraph 20 of the Complaint that “since at least

1980, the City of Wilmington has used a racial quota system in selecting qualified persons for the promotion to the rank of Inspector.”

Answer:

Historically, since 1978, the City of Wilmington has used a racial quota system in promoting individuals to the rank of Inspector. Inspector is the second highest rank in the WPD. In the past there have been either three or four Inspectors within the WPD. Currently, there are only two Inspector positions: Investigations Operations and Uniformed Operations.

After the race riots of 1968 in Wilmington, there were community pressures directed toward Mayor Hal Haskell and Chief John McCool for the appointment of an African-American Inspector. As a result, in 1969 they selected Andy Turner, an African-American, for promotion to the rank of Inspector. Inspector Turner was the first African-American ever to be selected to the rank of Inspector. Subsequently, upon his retirement, he was replaced by a white Inspector making all three Inspectors white.

Upon Harry Manelski's ascension to acting Chief of Police in 1976, all Inspectors were white. This again caused an uproar in the African-American community and they took to the streets in opposition by picketing Chief Manelski. Accordingly, in 1978, a meeting was held with Mayor William McLaughlin, his chief of staff, the city solicitor, Chief Manelski, and several African-American politicians and community representatives. At this meeting, it was agreed that a fourth Inspector position would be created for community relations and it would be filled by an African-American. Chief Manelski, however, would only promote a qualified individual, so in July of 1978 the WPD appointed Kenneth Miles, an African-American, to the rank of Inspector. By the end of 1978, the WPD also promoted Stanley Friedman and Charles Bryan to join Eugene Maloney in the rank of Inspector, all white males. As a result, there were now four Inspectors, three of whom were white, and one black.

In 1982, Inspector Kenneth Miles retired and was replaced by John Johnson, another black male. From the time Kenneth Miles was appointed to the rank of Inspector in July of 1978 continuing to present day, anytime a black Inspector retires, he is automatically replaced by another African-American. This position has exclusively been held by and reserved for a black male. The chronological progression is quite telling.

African-American Inspectors		
Name	Promotion Date	Retirement Date¹
Gilbert Howell	10/29/05	current
James Wright	2/17/01	10/28/05
James Stallings	2/20/98	2/16/01
Keith Ash	3/7/97	2/20/98
Michael Boykin	11/4/95	3/6/97
R. Michael Dixon	2/5/93	9/22/95
Samuel Pratcher	7/3/89	1/7/93
Preston Hickman	9/30/87	7/7/89
John Johnson	10/12/81	12/12/87
Kenneth Miles	7/6/78	3/6/82

Likewise, since 1978 anytime a white Inspector retires, he is automatically replaced by another white. From 1978 to 1989, three of the four Inspector positions were consistently held by white males. Then when Inspector Donald Payne, a white male, retired in 1989, the WPD eliminated one Inspector position, leaving only three individuals with the rank of Inspector - Charles Dougherty, William Draper, and Preston Hickman. Of these three Inspectors, two were white males, Inspectors Dougherty

¹ Retirement date refers to the date of actual retirement and/or date of appointment to Chief of Police. Retirement date may not necessarily reflect the date the Inspector left office, but rather may reflect the date of retirement meaning he was no longer on the payroll and/or exhausting accrued leave.

and Draper, and one was a black male, Inspector Hickman. Subsequently, in 1990, upon Charles Dougherty's retirement, the WPD reduced the number of Inspectors to only two, William Draper, a white, and Samuel Pratcher, a black. Since then the one of the two Inspector positions has been exclusively limited to a white male. Similar to the above chart, the chronological progression of white Inspectors is also quite telling.

White Inspectors since 1990		
Name	Promotion Date	Retirement Date
Martin Donohue	7/31/99	current
Ronald Huston	5/22/99	7/30/99
John Murray	3/22/97	5/21/99
John Vignola	10/29/94	3/7/97
William Draper	5/8/89	10/18/94
Richard LaFashia	2/8/89	5/7/89
Guy Sapp	9/30/87	12/21/88
Charles Dougherty	7/2/83	3/3/90
Donald Payne	5/16/83	3/21/89
John Doherty	1/29/83	9/17/86
Lawrence Curtis	10/14/81	9/1/83
Stanley Friedman	4/3/78	2/24/84
Charles Bryan	12/15/78	2/16/82
Eugene Maloney	10/16/73	12/15/83

This chart illustrates that from 1978, no matter how many Inspector positions existed, if a white Inspector retired, another white Inspector was promoted. This progression is even more apparent from 1990 forward when the WPD limited the Inspector positions to two. Beginning with Richard LaFashia's retirement in May of 1989, if a white Inspector retired he was replaced within the same month by another

white Inspector, identical to the progression of black Inspectors.

The two progression charts above prove that since 1978, the WPD has effectively operated under a fixed quota system where 50, 33 or 25% of the positions had to be filled by a black, while the other available positions were filled by whites. Subsequently, when the WPD limited the Inspectors to only two in 1990, they have been operating under a fixed number quota system where 50% is reserved for whites, and the other 50% is reserved for blacks. As Szczerba testified he “always was aware that, within the Inspector rank, there was an African-American and a Caucasian.” “Whether it’s four, three or two Inspectors, they were never all the same race.” (Former). Chief Manelski would explain that this result was intended since the WPD intentionally created one Inspector position to be held by a black.

5. State the basis for your contention in paragraph 20 of the Complaint that a “quota system has been approved by the Administrative Board of the City of Wilmington as set forth in § 4-200 of the Wilmington City Charter.”

Answer: Discovery relating to this contention is still ongoing and Plaintiff is attempting to retrieve records from which the information can be ascertained. Plaintiff reserves the right to supplement this interrogatory answer.

6. Identify and describe the meeting with Public Safety director James Mosley set forth in paragraph 41 of the Complaint, including any matters discussed at the meeting.

Answer: See Response to Interrogatory No. 2.

7. If you contend or will contend that the Mayor has discriminated based on race, sex, religious affiliation, or ethnic background other than in relation to the facts and allegations of the pleadings, identify and describe all facts that support such contention.

Answer: Plaintiff makes no contention in this case that the Mayor discriminated against any individual(s) other than Plaintiff.

8. If you contend or will contend that the Mayor has a history of unconstitutional discrimination, identify and describe all facts supporting such contention.

Answer: Plaintiff makes no contention in this case that the Mayor discriminated against any individual(s) other than Plaintiff.

9. State all facts that support Your contention that the mayor and Defendants did not have a legitimate non-discriminatory reason for appointing Howell to the position of Inspector.

Answer:

Plaintiff.

Plaintiff is a 27 year veteran of the WPD. (Compl. & Ans. ¶6). She entered the police academy in 1980 after attaining her four year Bachelor's degree from Pennsylvania State University in Administration of Justice where she was on the dean's list. (Compl. & Ans. ¶9). Plaintiff moved up the ranks from patrol officer in 1980 and was eventually promoted to the rank of captain in 1997. (Compl. & Ans. ¶12). She now serves as the Commanding Officer of the Human Resources Division. (Compl. & Ans. ¶6). Plaintiff was awarded the honor of being only the second female officer in the WPD to ever be promoted to the rank of captain and currently she is the only female captain in the WPD. (Compl. & Ans. ¶7). Plaintiff has an noteworthy performance record, as well as numerous accolades and commendations. (Compl. & Ans. ¶14; Szczerba Ex. 3,5,16-19; Szczerba 127-38; P172-8,181-2,184-99,202,204,206-20,223-57,260-1,264-76). Current Chief of Police, Michael Szczerba testified that Plaintiff has an impeccable professional reputation, a reputation of the highest order. (Szczerba 102-104). As Montgomery stated, "I've always had a lot of respect for her." (Montgomery 55). At all times, plaintiff

was a diligent, honest, and loyal employee who performed her job in an exemplary manner. (Szczerba 109).

Plaintiff was qualified for promotion to Uniformed Operations Inspector in February of 2001 and October of 2005. (Compl. & Ans. ¶¶66,76; Baker 81; Szczerba 97,108-09,204-05; Montgomery 55-6,60). In fact, in 2005, Szczerba recommended plaintiff for promotion to Uniformed Operations Inspector as she was the most qualified person for that job. (Szczerba 97,108-9,214-15; Compl. & Ans. ¶¶68,78; Montgomery 21,42-43; Mosley 31-32). Szczerba thought plaintiff was clearly “the best candidate.” (Szczerba 108). However, plaintiff was denied these two promotions because she is a white female.

The Two Inspector Vacancies at Issue.

In February of 2001, a vacancy for Uniformed Operations Inspector was created after James Stallings retired. (Compl. & Ans. ¶29; Baker 18-19; Szczerba 202-03; Mosley 18; Defendants Inter. Response² #1 p.3-4 and p.4-5). James Wright, a black male, was promoted to fill this vacancy. (Compl. & Ans. ¶30; Defendants Inter. Response #1 p.3-4 and p.4-5; Szczerba Ex. 2; Szczerba 22,64,202-5; Baker 19; Montgomery 19; Mosley 18,24). Then, in October of 2005, a subsequent vacancy for Uniformed Operations Inspector opened when James Wright retired. (Compl. & Ans. ¶31; Szczerba 200,206; Mosley 24-25). Plaintiff was included in the pool of qualified candidates for both of these vacancies. (Szczerba 97,108-09,203-05; Baker 81; Montgomery 55-6,60; Compl. & Ans. ¶¶66,76). In 2005, plaintiff actively sought promotion and was recommended to Mayor Baker for promotion by Szczerba. (Szczerba 97,214-7,221-22; Baker 65-6; Compl. & Ans. ¶¶68,78; Montgomery 21,25,42-43; Mosley 25,31-32,40). However, Baker appointed Gilbert Howell, a black male, instead. (Compl. & Ans. ¶31; Szczerba Ex. 2,12; Defendants Inter. Response #1 p.3-4 and p.4-5; Baker 16,149,49; Szczerba 22,27,75,96-97;

² Citations to “Defendants Inter. Response” refers to Defendant City of Wilmington’s Responses and Answers to Plaintiff’s First Set of Interrogatories Directed to Defendants and Defendant James M. Baker’s Answers and Objections to Plaintiff’s First Set of Interrogatories. (See D.I. 33 and 37).

Montgomery 20-22; Mosley 35). On both occasions the promotions went to less qualified African-American males. (Szczerba Ex. 2; Szczerba 97,108-9,214-15).

The Wilmington Police Department Uses an Illegal Racial Quota System for All Promotions to the Rank of Inspector. See response to interrogatory # 4.

Plaintiff's Prima Facie Case.

1. Count Two - Race Discrimination. Plaintiff can easily prove her prima facie case for race discrimination. She is white. (Compl. & Ans. ¶70; *see* Szczerba 214). Admittedly, plaintiff was qualified for the position of Uniformed Operations Inspector both in 2001 and 2005. (Szczerba 204-5,214; Baker 81; Montgomery 55,60; Compl. & Ans. ¶¶66,76). In fact, Szczerba testified that in 2005 she was the most qualified person for the job and, in his mind, was more qualified for the position than Gilbert Howell. (Szczerba 97,108-9,213-14). Plaintiff was denied promotion to Inspector in 2001 and again in 2005 when the positions were ultimately given to James Wright and Gilbert Howell, both African-Americans. (Compl. & Ans. ¶71; Defendants Inter. Response #1 p.3-4 and p.4-5; Szczerba Ex. 2; Szczerba 22,27,64,75,96-97,202-05; Baker 16,18-19,49; Montgomery 19-22; Mosley 18,24,35,40).

2. Count Three - Gender Discrimination. Likewise, plaintiff can easily prove her prima facie case for gender discrimination. She is female. (Compl. & Ans. ¶80; *see* Szczerba 214). Admittedly, plaintiff was qualified for the position of Uniformed Operations Inspector both in 2001 and 2005. (Szczerba 204-5, 214; Baker 81; Montgomery 55,60; Compl. & Ans. ¶¶66,76). In fact, Szczerba testified that in 2005 she was the most qualified person for the job and in his mind was more qualified for the position than Gilbert Howell. (Szczerba 97,108-9,213-14). Plaintiff was denied promotion to Inspector in 2001 and again in 2005 when the positions were ultimately given to James Wright and Gilbert Howell, both males. (Compl. & Ans. ¶71; Defendants Inter. Response #1 p.3-4 and p.4-5; Szczerba Ex. 2; Szczerba 22,27,64,75,96-97,202-05; Baker 16,18-19,49; Montgomery 19-22; Mosley

18,24,35,40). Interestingly, a female has never held the rank of Inspector in the WPD. (Compl. & Ans. ¶85; Szczerba 23-4; Baker 27; Montgomery 64; Defendants Inter. Response #1 p.3-4 and p.4-5; Szczerba Ex. 2).

In January of 2006, plaintiff learned that she was the victim of racial discrimination for promotion to the rank of Inspector both in 2001 and 2005. After giving deposition testimony in another lawsuit, Szczerba approached plaintiff to explain that in October of 2005, he had specifically recommended her to Baker for promotion to Uniformed Operations Inspector. (Szczerba 237; Dietz Inter. Response #2 p. _; Szczerba deposition testimony in Boyd v. Wilmington Police Department, 05-178-KAJ, January 23, 2006, p.5-6). Plaintiff then inquired as to why she did not receive the promotion. Szczerba stated Baker's appointment was based on race only and it had nothing to do with her personally or her qualifications. His explanation was simply that it was a black position.

Fuentes Prong 2 - The Weight of the Evidence Proves Discrimination.

Through Baker's own admissions and testimony of those who worked closely with him during the time period the promotion decisions at issue were made, the record contains abundant evidence which a reasonable jury can accept to conclude that the denial of these two promotions were discriminatory.

Both circumstantial and direct evidence of illicit intent exists, such as:

1. Baker admitted to then FOP Vice-President George Collins in October of 2005 that the Inspector position had to be given to a black. (Collins 9,11).
2. Szczerba testified that Public Safety Director James Mosley inquires into the race of every candidate for promotion and with regard to any transfers. (Szczerba 208-9). Baker admits Mosley may be inquiring into the race of these candidates to promote diversity in the workforce. (Baker 30,37; Montgomery 24).
3. Baker admits that department decision makers are to consider diversity when promoting candidates who are of equal caliber, especially when the existing positions are filled by all whites. (Baker 33-35; Montgomery 11-17).
4. Baker admits that he took into consideration various recommendations from the community and City Council members in appointing Howell to Inspector. (Baker 72-74). However, Baker also admitted that the recommendations for Howell came from the

northeast area of Wilmington, which is predominately black, and the City Council members who recommended Howell were all African-American. (Baker 72-74).

5. Since 1978, there have never been Inspectors all of the same race. The WPD has historically reserved one Inspector position for an African-American male. (Defendants Inter. Response #1 p.3-4 and p.4-5; Szczerba 11; see Baker 39). Likewise, all other Inspector positions have been limited to white males. (Id). Thus, when a vacancy is created by a white male, the position is filled by another white male and when a vacancy is created by a black male, the position is automatically filled by a black male.
6. Since 1990, when the WPD decreased the number of Inspectors to two, it has operated under a fixed number quota where 50% is reserved for whites and 50% is reserved for blacks. (Defendants Inter. Response #1 p.3-4 and p.4-5; Baker 39). Further, Since Baker took office in 2001, this has been the result of his appointments to the rank of Inspector. (Montgomery 29-30; Mosley 41-43; see Baker 8).
7. Szczerba testified that the procedure for promoting Gilbert Howell in 2005 was procedurally irregular and unprecedented. (Szczerba 207). In 2001, Szczerba was able to make a meaningful recommendation to the mayor for the promotion to Uniformed Operations Inspector. (Szczerba 202-6). However, in 2005, when Szczerba was going to recommend a white female for promotion to Inspector, Baker made it exceedingly clear to Szczerba, that he would be making the decision regardless of Szczerba's recommendation. (Szczerba 201-2,205; Baker 64).
8. A female has never held the rank of Inspector in the WPD. (Compl. & Ans. ¶85; Szczerba 23-24; Baker 27; Defendants Inter. Response #1 p.3-4 and p.4-5).

Fuentes Prong 1 - Weaknesses, Implausibilities, Inconsistencies, Incoherencies and

Contradictions In the Defense Case.

An extremely telling **weakness** and **contradiction** in defendants' reason for promoting Howell is that Montgomery testified Baker promoted Howell, an African-American, to promote diversity. (Montgomery 24-26;62-64). Montgomery admitted that Howell's race "may have been one of the factors" and Baker selected Howell, among other reasons, to "have some diversity in the work force." (Mongtomery 24-25). "I do believe that [diversity] is one of the reasons and that's something that we look at when we look for anyone to serve in an appointed position." (Mongtomery 64).

Yet perhaps the most telling **weakness** and **contradiction** in the defendants' non-discriminatory reason for promoting Gilbert Howell in 2005 is that Baker's own Public Safety Director, James Mosley,

and Chief of Staff, William Montgomery, did not agree with the appointment of Howell. (Montgomery 6,10,60,65; Mosley 5,35-36,48). Additionally, the Chief of Police, whom Baker himself appointed, argued against the appointment of Howell. (Szczerba 8,193,217,220-21; Baker 43,56). Interestingly, three of the four people who met to discuss the Inspector vacancy did not want Howell to be appointed to Uniformed Operations Inspector. (Szczerba 8,193,217,220-21; Montgomery 40-41,60,65; Mosley 28,35-36). It is **implausible** that Baker promoted Howell because he was the most qualified individual in light of the fact that Mosley, Montgomery and Szczerba did not feel he deserved or was capable of serving in that capacity.

In making his recommendation for promotion to Uniformed Operations Inspector, Szczerba attempted to set forth the reasons plaintiff would make an excellent Inspector, while also pointing out to the mayor potential problems the department would face if Howell was appointed. (Szczerba 216-17,221-22; Baker 65-66; Montgomery 42-43; Mosley 31-32). He explained in detail various factors explaining how plaintiff surpassed Howell in terms of qualification for this promotion. (Szczerba 222). These reasons help prove defendants' non-discriminatory reasons for promoting Howell, as well as Wright in 2001, are merely pretextual.

Attendance Records

- 1.
- 2.
- 3.
- 4.
- 5.

**SEALED
DOCUMENTS
(A1460 - 1470)**

12. State all facts that support Your contention in paragraph 33 that with regard to the

appointment of James Wright “because of the operation of the quota system, Chief Szczerba was forced to consider only African-Americans for promotion to this position, to the detriment of plaintiff.”

Answer: See Response to Interrogatory No. 4.

13. State all facts not otherwise stated in Your responses to these interrogatories that support the allegations in Your claims against the Mayor and the Defendants, that support any other contention that You made or will make at trial.

Answer: Objection. Overbroad, burdensome, non-specific, and not designed to lead to the discovery of admissible evidence. See also General Objection No. 11.

As to Objections:

THE NEUBERGER FIRM, P.A.

/s/ Thomas S. Neuberger

THOMAS S. NEUBERGER, ESQUIRE (#243)

STEPHEN J. NEUBERGER, ESQUIRE (#4440)

Two East Seventh Street, Suite 302

Wilmington, DE 19801

(302) 655-0582

TSN@NeubergerLaw.com

SJN@NeubergerLaw.com

Attorneys for Plaintiff

Dated: April 13, 2007

Dietz, Nancy / Pleadings / Baker - First Interrogatory Responses.Final.wpd

DECLARATION OF CAPTAIN NANCY DIETZ UNDER 28 U.S.C. § 1746

1. I am a Plaintiff in this action. I have personal knowledge of the facts contained in this Declaration and, if called as a witness, I am competent to testify to those facts.

2. I have read the Plaintiff's Answers to Defendant's Interrogatories set out above. The answers contained therein are true and correct to the best of my knowledge, information, and belief.

3. Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

Nancy S. Dietz
CAPTAIN NANCY S. DIETZ

4/11/07
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH A. BOYD,

Plaintiff;

v.

WILMINGTON POLICE DEPARTMENT,

Defendant.

)
)
) Civil Action No.
) 05-178 KAJ
)
)
)

Deposition of MICHAEL J. SZCZERBA taken pursuant to notice at the Law Offices of Margolis Edelstein, 1509 Gilpin Avenue, Wilmington, Delaware, beginning at 2:30 p.m. on Monday, January 23, 2006, before Ann M. Calligan, Registered Merit Reporter and Notary Public.

APPEARANCES:

JEFFREY K. MARTIN, Esquire
LORI BREWLINGTON, Esquire
MARGOLIS EDELSTEIN
1509 Gilpin Avenue
Wilmington, Delaware 19806
on behalf of the Plaintiff;

ROSAMARIA TASSONE, Esquire
Assistant City Solicitor
City of Wilmington Law Department
Louis L. Redding City/Council Building
800 North French Street - Ninth Floor
Wilmington, Delaware 19801
on behalf of the Defendant.

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477



WILCOX & FETZER LTD.
Registered Professional Reporters

COPY

A1474

1 ALSO PRESENT:

2 KENNETH BOYD

3 -----

4 MICHAEL J. SZCZERBA,

5 the witness herein, having first been
6 duly sworn on oath, was examined and
7 testified as follows:

8 EXAMINATION

9 BY MR. MARTIN:

10 Q. Good afternoon, Chief. My name is Jeff Martin.
11 I am the attorney representing Ken Boyd in this
12 matter, and I have series of questions for you.

13 Let me first ask whether you're familiar
14 with the rules of depositions having gone through them
15 before.

16 A. Yes, but it's been a while.

17 Q. Let me just refresh you briefly, and that is,
18 first, I ask you to make all of your responses in a
19 audible fashion so the court reporter can take it down
20 rather than a nod or a shake of the head. Try to
21 avoid mm-hmm or uh-huh, which is something that at
22 least I always lapse into, and if you do, I'll gently
23 remind to you, ask you whether that means yes or no.

24 I would ask you to listen carefully to



WILCOX & FETZER LTD.
Registered Professional Reporters

1 each of the questions that I ask. It's my intent to
2 ask one question at a time. And if you do not
3 understand, need a clarification at all, please just
4 ask for that and I'll be happy to rephrase the
5 question.

6 A. Okay.

7 Q. If you need to have a break, need not tell us
8 why. You're the chief of police and sometimes chiefs
9 have to go quickly. I understand that. I appreciate
10 the fact that you're here, and we'll try to do this
11 with as much dispatch as we can.

12 Chief, how many years have you served with
13 the Wilmington Police Department?

14 A. 27.

15 Q. And you were promoted to sergeant and
16 lieutenant, is that correct?

17 A. That's correct.

18 Q. Do you remember the years of your promotions to
19 sergeant and lieutenant?

20 A. Sergeant in '89, and I believe lieutenant in
21 '99.

22 Q. And then after '99, were you appointed to
23 captain?

24 A. No.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. Went from lieutenant to chief?

2 A. That's correct.

3 Q. And you were appointed chief by then Mayor
4 Baker?

5 A. Yes.

6 Q. And just for my clarification purposes, I
7 understand that officers moving from corporal to
8 sergeant are promoted as well as those moving from
9 sergeant to lieutenant are promoted, is that correct?

10 A. That's correct.

11 Q. And I further understand that, beyond that,
12 it's a matter of appointment rather than promotion?

13 A. No. The captains are promoted positions.

14 Q. Is that done with the benefit of the Management
15 Scientist program or no?

16 A. No.

17 Q. How is it that captains are promoted?

18 A. Captains are promoted with selection by the
19 chief of police.

20 Q. You're saying that's something different from
21 an appointment by the chief of police?

22 A. That's correct. It's -- according to our rules
23 and regulations, it's considered a promotion, and I
24 think contractually it's considered a promotion.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. And is there any type of banding process that's
2 done for sergeants and lieutenants?

3 A. Yes.

4 Q. And who does the banding process for captain?

5 A. It's not banded. It's the eligible
6 lieutenants.

7 Q. So, in other words, it was only the lieutenants
8 that could be promoted; it's not somebody moving from
9 sergeant up to captain?

10 A. That's correct.

11 Q. And then beyond that, there is the position of
12 inspector. Is that an appointment?

13 A. Yes.

14 Q. And who exercises that appointment?

15 A. The mayor of the City of Wilmington through the
16 recommendation of the chief of police.

17 Q. And then the position of chief is also by the
18 mayor of the City of Wilmington?

19 A. That's correct.

20 Q. Now, we have just had an opportunity to take a
21 deposition of Inspector Howell. He was, as I
22 understand it, was just appointed in October of '05,
23 is that correct?

24 A. That's correct.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. And did you recommend him to Mayor Baker for
2 appointment?

3 A. No, I did not.

4 Q. And who was it that you recommended for
5 appointment?

6 A. Another captain.

7 Q. Was that Captain Nancy Deitz?

8 MS. TASSONE: I'm just going to, again,
9 object just for the record to this line of
10 questioning.

11 MR. MARTIN: Sure. Sure. You have a
12 blanket objection on that. That's fine.

13 MS. TASSONE: You can answer.

14 A. The answer to your last question is yes.

15 BY MR. MARTIN:

16 Q. And what was the basis for recommending Captain
17 Deitz over then Captain Howell?

18 A. The recommendation was based upon her ability
19 to lead which I believe her ability to lead that the
20 men and women of the Wilmington Department of Police
21 would follow, just her overall leadership qualities.
22 And those leadership qualities would be the ability to
23 make decisions, to recognize problems, her
24 communicative skills, respect by peers and



WILCOX & FETZER LTD.
Registered Professional Reporters

1 supervisors, self-initiated activity, planning,
2 organizational skills, so on, so forth.

3 Q. Were there any other candidates for inspector
4 other than Howell and Deitz?

5 A. Yes. Essentially would have been the -- all
6 eight of the captains.

7 Q. Do you know why it was that Mayor Baker
8 selected Captain Howell over your choice of Captain
9 Dietz?

10 A. No, I do not.

11 Q. Did you ever discuss that with the mayor?

12 A. No.

13 I want to clarify that as far as
14 discussion. I brought my recommendation to the mayor.
15 He accepted my recommendation and then decided not to
16 go with that. So there was no explanation as to why
17 he selected someone else over Captain Deitz or over
18 really, as a matter of fact, any other captain that
19 was available.

20 Q. Now, I'd like to understand your role as chief
21 in terms of the promotions to sergeant and lieutenant.
22 First of all, I want to get an explanation of the
23 process that is done to an extent by an outside
24 agency, is that correct?



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. That's correct.

2 Q. Do I understand that they do that pursuant to
3 Wilmington Police Department guidelines and requests?

4 A. That's correct.

5 Q. I understand that you instituted some type of
6 seniority point system into the selection process?

7 A. Yes. For seniority to be considered in the
8 computing of the final scores and placement of
9 individual officers within a particular band. In
10 essence, I guess the short way of explaining it is
11 seniority could only help you. It would not hinder
12 another officer per se, but an officer with seniority
13 points moving up from the third band into the second
14 band would then not knock someone out of that second
15 band. It would just be an additional officer in that
16 second band.

17 Q. So these seniority points are extra points that
18 might boost one from one band up to a higher band?

19 A. That's correct. If they are -- if all the
20 scores are computed for the written phase, the oral
21 interview phase, and the resume phase, the bands are
22 set, and then the seniority points are added at that
23 point to see if there's any movement within the list.

24 Q. And the seniority points, as I understand it,



WILCOX & FETZER LTD.
Registered Professional Reporters

1 are used to place the candidate into a particular
2 band?

3 A. That's correct. It can possibly move a
4 candidate from one band to the next highest band.

5 Q. Once inside a particular band, the seniority
6 points don't have any particular effect, is that fair
7 to say?

8 A. That's fair to say, and neither do any of the
9 other points.

10 Q. Once you're in a band, that's it. Then you
11 make the selection from the band?

12 A. Yes. The recommendation from the consultant
13 is, at that point, all the individuals within a
14 particular band are of equal supervisory quality.

15 Q. And do you as police chief or anybody in the
16 Wilmington Police Department, for that matter, have
17 any role in selecting the bands of the various
18 candidates?

19 A. No.

20 Q. That's all done by this outside agency?

21 A. That's correct.

22 Q. Have you had a situation where this outside
23 agency made an error, for example, a calculation error
24 and, you know, one person appeared in one of the bands



WILCOX & FETZER LTD.
Registered Professional Reporters

1 and should have been in quite another band?

2 A. I have not had that experience.

3 Q. Do you have any kind of recourse to adjust that
4 band when you find some type of error?

5 A. If that was brought to the attention, there is
6 the availability of appeal. For example, on the
7 written test, for -- appeal certain written questions
8 which were submitted in writing, and then they are
9 evaluated by the consultant, and the decision is made
10 then.

11 Q. Okay.

12 A. But as far as any appeal of one moving by way
13 of appeal where there was a mistake made in moving
14 from one band to another, I'm not aware of that.

15 Q. Now, let's talk about how you select candidates
16 within each band. As I understand your testimony,
17 once you're in the band, all those seniority points
18 and any other points go out the window. All the
19 people are considered equal?

20 A. Yes.

21 Q. And then it's up to you as chief to make that
22 selection, correct?

23 A. That is correct.

24 Q. Before you make that selection from a band --



WILCOX & FETZER LTD.
Registered Professional Reporters

1 and we are just talking generically here. We'll talk
2 in a few minutes specifically about Officer Boyd.
3 What do you do to determine the most eligible
4 candidates within the band?

5 A. I try to pick the person who I believe that the
6 men and women of the Wilmington Department of Police
7 would follow. And I'll be repeating myself somewhat,
8 but taking into consideration the overall supervisory
9 capabilities, again, the ability to make decisions,
10 make independent decisions, communication skills,
11 their display of their initiative, self-initiation of
12 activity, the ability to go above and beyond. Example
13 there would be participation in our crisis management
14 team, for example. Again, respect by peers and
15 subordinates. If there was something recently
16 happened disciplinary-wise, that would be taken into
17 consideration and, of course, their experience.

18 By experience, it's just not a matter of
19 the number of years you have at any particular job or
20 on the police department, it's what you have done with
21 what you have learned with that experience.

22 Q. Now, how is it as chief you gather this
23 information?

24 A. Through constant review of personnel on a daily



WILCOX & FETZER LTD.
Registered Professional Reporters

1 basis, an hour-by-hour basis, actually get feedback
2 from supervisors. All investigations come across my
3 desk. There's a yearly performance evaluation
4 submitted by supervisors that are signed off by
5 myself.

6 Q. As you're going to select from Band I, for
7 example, and let's say there are three candidates in
8 there, do you make it a point to talk to each of the
9 three candidates' supervisors?

10 A. No.

11 Q. You have access to their personnel files?

12 A. Yes, I do.

13 Q. You review those files?

14 A. No.

15 Q. You said that you do this hour by hour, meaning
16 that, at your desk, you see all kinds of complaints
17 and performance reviews, et cetera, that go through?

18 A. That's correct. Investigative reports,
19 supervisor evaluations, miscellaneous investigations,
20 reports, daily memorandums, the full gamut. People
21 that are -- review of reports that are submitted by
22 our medical dispensary.

23 Q. But as you prepare to select from a particular
24 band, you don't do anything specific with regard to



WILCOX & FETZER LTD.
Registered Professional Reporters

1 the candidates in the band?

2 A. No.

3 Q. This is just something that you keep in your
4 head based upon what you've seen happening in the last
5 year or years?

6 A. Yes.

7 Q. Now, is it fair to say, Chief, that, at least
8 for the first few years of your administration, that
9 you used a seniority system within the band for a
10 means of selecting the candidates?

11 A. No.

12 Q. Did you at any point use a seniority system for
13 the selection of candidates within a band?

14 A. No.

15 Q. So if I were to represent to you that Inspector
16 Howell sat in that seat just an hour ago and said that
17 he heard you on two or three occasions say that you
18 were going to follow a seniority system, you will
19 disagree with that?

20 A. That's correct.

21 MR. MARTIN: Might as well have this one
22 marked as an exhibit because I haven't done that yet,
23 and I probably should. Let's have this marked
24 Szczerba 1.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 (Szczerba Deposition Exhibit 1 was marked
2 for identification.)

3 BY MR. MARTIN:

4 Q. Chief, I'm giving to you what has been marked
5 Szczerba 1 for this deposition, the document from
6 Management Scientist, dated April 15, 2002, addressed
7 to you, showing bands for all sergeant candidates.
8 Does that look familiar to you?

9 A. Yes.

10 Q. Let me direct your attention to Bands I and II
11 on this particular sheet of paper. And I will
12 indicate to you that the numbers written there next to
13 the some names and Bands I and II were written by Ken
14 Boyd, and those numbers represent promotion dates of
15 various candidates. Now. If we look at Band I, do
16 you have any reason not to believe that Wyatt was the
17 first promoted, followed by Jones, and then Donohue?

18 A. No.

19 Q. Do you have any reason to believe that Wyatt
20 was more senior than Jones who was more senior than
21 Donohue?

22 A. Technically, yes. Wyatt would -- now knowing
23 him in hindsight, Wyatt with more time than Jones.
24 However, with Donohue, if you're -- I see it noted in



WILCOX & FETZER LTD.
Registered Professional Reporters

1 here in handwriting if you have the same list I do, it
2 has at that time she was not a cadet. But which,
3 however she does have prior service under the police
4 department in a different capacity but not at a cadet.

5 Q. She was actually a dispatcher, was she not?

6 A. I believe she worked as a parking regulation
7 enforcement officer. I believe she has some
8 experience as a supervisor in our support services
9 division, data entry, and that's all I'm aware of, but
10 she was not a cadet.

11 Q. But that certainly would not count towards her
12 time and grade as a Wilmington police officer?

13 A. Not as time and grade. It would count for
14 vacation scheduling, and I guess towards retirement
15 because it would allow you to have a buy-in for the
16 add-on to your police time, military service, and
17 previous service with the city. So in that essence,
18 yes, seniority does come into play there.

19 Q. Let me go back. A moment ago you denied that
20 you used the a seniority-based promotional system, is
21 that fair to say?

22 A. That's correct.

23 Q. And is it also your denial that you deny
24 telling other of your officers that you used seniority



WILCOX & FETZER LTD.
Registered Professional Reporters

1 to promote within a band?

2 A. That's correct.

3 Q. Are you aware of any type of misunderstanding
4 as to why other officers have come in here and
5 testified about seniority and you say it was not
6 seniority?

7 MS. TASSONE: Objection. I don't what
8 other individual --

9 MR. MARTIN: I'm trying to understand. I
10 mean, it's either -- I won't use the analogy black and
11 white. That's probably very inept, but I mean, it's
12 180 degrees, you know, where you have an officer, your
13 number 2 man, Inspector Howell, who said he's heard
14 you on at least three occasions say it was seniority.

15 MS. TASSONE: I'll object. It
16 mischaracterizes -- it's not his testimony.

17 MR. MARTIN: Well, that's fine. You may
18 answer, Chief.

19 MS. TASSONE: Yes.

20 MR. MARTIN: We are trying to understand
21 this.

22 A. It may have come up in discussions with
23 officers when you go over -- you can see this list,
24 for example, how it's marked up and officers trying to



WILCOX & FETZER LTD.
Registered Professional Reporters

1 gauge how picks are being made. For example, it may
2 not also be spoken of as seniority. They may try to
3 gauge, for example, myself -- oh, he served with him
4 and her in detectives and that's why they're picked,
5 or, look, these are all former A Platooners in the
6 patrol division. So they try to -- I guess, in
7 discussions, try to fathom some type of system or how
8 the selections are being made.

9 It was brought to my attention one time of
10 a sergeant's candidate inquiring as to if this was
11 being done by seniority, who was subsequently
12 promoted. But my response -- and I don't recall who
13 brought that to my attention -- my response was to
14 relay to that office it was not being done like that.
15 You have officers of varying service with the --
16 services with the department.

17 However, without having all of them from
18 the same class, you're going to -- same class I mean
19 same academy class -- you're going to have some
20 difference in their seniority with the police
21 department, some greatly and some just a matter of
22 years or matter of months.

23 BY MR. MARTIN:

24 Q. As to Band I, though, do you dispute the



WILCOX & FETZER LTD.
Registered Professional Reporters

1 seniority of Wyatt, Jones, and then Donohue in
2 descending order?

3 A. No, I do not.

4 Q. Let's look at Band II, and in that band we have
5 O'Connor, being first promoted and then Sammons,
6 followed by Sullivan and Rodriguez. Do you see that?

7 A. Yes.

8 Q. Do you have any question as to whether O'Connor
9 was the most senior person in Band II?

10 A. Only through doing the research and looking it
11 up. Other than that, if you brought me in here today
12 and asked me who was senior in these selections, I
13 would not be able to tell you. But as a matter of
14 doing the research in preparation, yes, I know that he
15 was the most senior.

16 Q. Okay.

17 A. However, there's also another thing comes into
18 play too. Again, I discussed, as in a situation with
19 Sergeant Donohue, also with Joe Sammons, he
20 technically, with service with the city and seniority,
21 would have been the most senior person and that would
22 include cadet time because he was a cadet.

23 Q. So I'm sorry. You're saying Joe Sammons had
24 more --



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. Time with the city.

2 Q. Than O'Connor?

3 A. Yes. I believe so.

4 Q. That would be cadet time?

5 A. Yes.

6 Q. Striking the cadet time, O'Connor had more time
7 than Sammons, correct?

8 A. Yes.

9 Q. And then on Band II, beyond O'Connor and
10 Sammons, who had the next most seniority?

11 A. I believe possibly Liam Sullivan, or they could
12 be out of the same class, he and Joe Sammons, again
13 meaning the academy class.

14 Q. How about the seniority of Ken Boyd versus
15 Rodriguez? Who had more seniority there?

16 A. I believe Ken Boyd.

17 Q. What can you tell me about your selection?
18 What factors entered into your consideration when you
19 selected Mike Rodriguez over Ken Boyd?

20 A. Well, there wasn't a situation of Mike
21 Rodriguez over Ken Boyd. It was Mike Rodriguez over
22 Ken Boyd, Steve Misetic, Robert Curry, Charles Emory,
23 Anthony Harris, and Ralph Hauck. So it wasn't pitting
24 one candidate versus the other. It was, again,



WILCOX & FETZER LTD.
Registered Professional Reporters

1 reviewing what I believed their supervisory abilities
2 are as compared to the rest of the people eligible.
3 So it's not a one on one, one candidate versus
4 another. If it were two candidates on the list, yes,
5 that would be the situation. But in this case, it is
6 not.

7 Q. As you know, this case is about Ken Boyd not
8 being selected for sergeant.

9 A. Yes.

10 Q. You were the one who did that. I'd ask you to
11 be brutally honest and candid with us, with me, and
12 tell me why Ken Boyd was not selected as sergeant?

13 MS. TASSONE: First, I'm going to object
14 to any indication or implication, I should say, in
15 your question that the chief has not been honest up to
16 this point, meaning he took an oath and he's answering
17 your questions.

18 MR. MARTIN: I don't dispute that.

19 MS. TASSONE: Okay. I just wanted to make
20 it clear for the record.

21 You can answer if you understand the
22 question.

23 A. Well, my response would be a matter of why Mike
24 Rodriguez was selected, not as a matter of why Kenny



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Boyd wasn't promoted, why a matter of the selection
2 wasn't Steve Misetic, why the selection wasn't Robert
3 Curry, why the selection wasn't Charles Emory, why the
4 selection wasn't Anthony Harris, why the selection
5 wasn't Ralph Hauck because it was presenting a
6 situation that those other candidates were not even
7 being considered.

8 Q. Let us talk about Rodriguez and Boyd because in
9 terms of seniority, Chief, Boyd clearly had more
10 seniority than did Rodriguez. I understand the
11 position that you're taking here today that you do not
12 use that, but could you please compare and contrast
13 the candidacies of Rodriguez versus Boyd?

14 A. Mike Rodriguez, self-motivated, takes
15 self-initiated action. He's a good communicator.
16 Recognized not only by his peers -- his peers and his
17 supervisors as a superb performer, recognized by the
18 Delaware League of Local Governments as the Police
19 Officer of the Year.

20 Q. Let me ask you, if may -- I mean, if you want
21 to finish, that is fine, but I'd like to go back and
22 ask you about each one of those. And I'm sorry I
23 didn't mean to cut you off.

24 A. Okay.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. Were there other qualifications that you can
2 think of?

3 A. As communication skills, self-initiated action,
4 his willingness to go above and beyond, a member of
5 our crisis management team, better known as SWAT team.

6 Q. Can you tell me how Mike Rodriguez was
7 self-motivated?

8 A. I know from a period of him taking initiative
9 to always apply for training, his attending of college
10 courses and, I believe, attained a bachelor's degree
11 while on the police department, taking on his own
12 initiative Spanish classes to become more proficient
13 in Spanish, self-initiated in the ability to
14 investigate and especially as a drug investigator,
15 developing numerous search warrants, either through
16 complaint-related or, again, self-initiated with
17 working with informants.

18 Q. Communication skills.

19 A. Communication skills, I know he can put his
20 thoughts down in writing. I witnessed his court
21 testimony before. I witnessed his ability to
22 communicate at community meetings.

23 Q. You said he was a superb performer?

24 A. Yes.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. Is that measured by performance evaluations?

2 A. Yes. Every officer is measured by performance
3 evaluations. It's a performance evaluation through
4 the City of Wilmington for all employees on a yearly
5 basis.

6 Q. Were his any different from, let's say, Officer
7 Boyd's?

8 A. Probably not. We have a tendency that -- to
9 see with performance evaluations pretty much you're
10 ranked so closely on the ranking category of one to
11 five that it's usually not real significant changes
12 you can read in the supervisory comments -- in them
13 occasionally.

14 Q. You said he was determined to be Police Officer
15 of the Year by the Delaware League?

16 A. Yeah. Delaware League of Local Governments.

17 Q. Do you remember what year this was?

18 A. Either in 2001 or 2002. He was also recognized
19 by Kiwanis Club of Wilmington as a police officer of
20 the quarter and possibly of year, but I'm not sure of
21 the yearly award, but I know he was police officer of
22 the quarter.

23 He also received numerous departmental
24 commendations and awards.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. And how long have you known Mike Rodriguez,
2 Chief?

3 A. Probably at least since 1991.

4 Q. And do you know him outside of the Wilmington
5 Police Department?

6 A. No, I do not.

7 Q. There was an allegation in the complaint that
8 was denied to the effect that you were the godfather
9 of one of his children.

10 A. Yes.

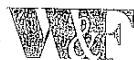
11 Q. You're denying that?

12 A. That's correct.

13 Q. I don't know how that came about, but all
14 right.

15 Let's take a look if we can at Ken Boyd
16 during his promotional process and determine what
17 aspects you found, you know, plus and minus with
18 Officer Boyd's application to be sergeant.

19 A. Superb performer. He is a schooled
20 investigator in our detective division. Again, a good
21 detective. Has a good detective background with his
22 experience in our evidence detection unit. I believe
23 well educated with a bachelor's degree. Respected by
24 his peers and supervisors. Good communicator. I



WILCOX & FETZER LTD.
Registered Professional Reporters

1 believe he's been involved in coaching youth in
2 sports.

3 Q. And all of that's outside the realm. You still
4 consider that a positive for a police officer?

5 A. Yeah. Positive, especially in the realm of
6 talking about community policing and officers
7 extending themselves above and beyond.

8 Q. Okay.

9 A. Kenny always represents the department well,
10 both in appearance and demeanor.

11 Has always responded to -- including calls
12 from myself for assistance, whether it be on the
13 street or investigations.

14 Lack of any significance in his
15 disciplinary record.

16 Q. Do you recall whether there were any negatives
17 in Ken Boyd's background when you were considering his
18 applicant to be sergeant?

19 A. No. None.

20 Q. How about with Mike Rodriguez?

21 A. None also.

22 Q. Given the two superb performers as you noted,
23 Rodriguez and Boyd, how would you match them up in
24 terms of their application to be sergeant?



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. Again, all of almost equal ability according to
2 being banded. I think the band is -- exemplifies how
3 close they are in that they are all together. And
4 with the -- in comparison to the other candidates,
5 that was one advantage we have with the Wilmington
6 Department of Police is an excellent group of officers
7 who I would not have any reservation if I had the
8 openings to be able to promote the entire band.

9 Q. When did you become aware that Officer Boyd
10 filed a claim against the City of Wilmington with
11 regard to his lack of promotion?

12 A. I do not recall the date. I was aware of a
13 complaint filing with the Department of Labor, I
14 believe.

15 Q. Did you participate in the defense of that
16 complaint?

17 A. Yes. I believe through an interview with I
18 believe Martin Nessler of the city law department.

19 Q. Were you aware that that was filed sometime in
20 2004?

21 A. I could not give you even a year, if that was
22 the correct year.

23 Q. Let me turn your attention to the selection of
24 Faheem Akil or the lack of the selection during the



WILCOX & FETZER LTD.
Registered Professional Reporters

1 process to promote him to lieutenant. Are you
2 familiar with that lieutenant selection process as
3 well?

4 A. Familiar with the lieutenant selection process,
5 yes.

6 Q. Is it fair to say that William Brown was
7 promoted to lieutenant prior to Akil being promoted to
8 lieutenant?

9 A. Yes.

10 Q. And what was the reason for that?

11 A. Again, it was William Brown as compared to the
12 rest of the candidates, just not Faheem Akil.

13 Q. Chief, if I were to put the prior Management
14 Scientist list in front of you, would you agree or
15 disagree that, within the bands, we see promotions
16 that are aligned with seniority?

17 A. Strictly aligned with seniority?

18 Q. Yes.

19 A. No, we would disagree.

20 Q. Can you give me any examples to show that
21 promotions were not done by way of seniority?

22 A. Initially coming in after my appointment as
23 chief of the police in 2001, there had not been any
24 promotions made for a significant amount of time, I



WILCOX & FETZER LTD.
Registered Professional Reporters

1 believe the whole previous year. Coming in, I made a
2 series of promotions. And this is through researching
3 that my initial four promotions to the rank of
4 lieutenant -- my first selection, for example, had
5 less seniority than my second selection. In turn, my
6 third section had less seniority than my fourth
7 selection.

8 I recommended a captain for promotion to
9 inspector who was not the senior captain.

10 Q. Who was that?

11 A. James Wright.

12 Q. Let me focus on sergeant levels. As I
13 understand this, we looked at Szczerba 1 -- let me be
14 clear, because perhaps I'm not right now, that the
15 selections that were made and the order within the
16 bands is consistent with the seniority of the
17 individuals as shown on Szczerba 1 in front of you --

18 A. Okay.

19 Q. -- with the exception of Boyd being left out in
20 Band II before Rodriguez, is that accurate?

21 A. Yes.

22 MR. MARTIN: I'm going to take a break for
23 just a moment because I have that list in my office.
24 I need to pull that out.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 (Recess taken.)

2 (Szczerba Deposition Exhibit 2 was marked
3 for identification.)

4 BY MR. MARTIN:

5 Q. Chief, I put before you Szczerba 2 which is the
6 list of banding for sergeants. They are the two years
7 prior to what we had seen on Szczerba 1 and again
8 written on there are notes written by Mr. Boyd with
9 regard to his understanding of the promotional dates
10 of these various individuals. Could you first look at
11 Band I and look at the dates set forth there and see
12 if you see anything that you don't agree with in terms
13 of the promotional date.

14 A. I don't -- I don't disagree. I cannot be in
15 complete agreement without having, you know, a list to
16 be able to look to confirm the dates. This was a list
17 that I inherited coming in as chief of police.

18 Q. And would you agree that, in Band I, the
19 promotions were in line with the seniority of the
20 various individuals?

21 A. No.

22 Q. And why not?

23 A. I believe my first pick from this band was
24 Thomas Dempsey. So that's what's confusing me with



WILCOX & FETZER LTD.
Registered Professional Reporters

1 listing Mayna Santiago as the first pick. And then,
2 for example, Thomas Dempsey would have been junior --
3 these are my initial picks coming in as chief. So
4 Thomas Dempsey would have been, I believe, my first
5 pick and I guess less seniority than Steve Barnes and
6 Mayna Santiago.

7 Then there's, you now, noting the numbers
8 on there next to Donald Bluestein -- he was recently
9 promoted, was not promoted off of this list. And I
10 don't believe Scott Jones was promoted off of that
11 list. So as far as those dates and the order of the
12 sequence of promotions, I could not tell you.

13 Q. Now, have you had any opportunity to speak with
14 the mayor with regard to issues involving racial
15 relations within the city police department?

16 A. Speak with the mayor directly, no.

17 Q. Have you spoken with any of his staff?

18 A. Spoken with the director of public safety, but
19 that was mainly in response to several anonymous
20 letters that were submitted in one fashion or another
21 to council or however. They were delivered
22 anonymously.

23 Q. What was done about that situation?

24 A. I issued a memorandum to all personnel for that



WILCOX & FETZER LTD.
Registered Professional Reporters

1 to cease, instructed the proper avenues to pursue with
2 complaints of that nature. There was a letter that
3 went out from the mayor, myself, the city solicitor,
4 director of personnel, director of public safety,
5 pretty much all the same area, same subject area that
6 was delivered to all employees' homes.

7 Q. All City of Wilmington or Wilmington Police
8 Department?

9 A. Wilmington Police Department.

10 Q. Do you believe that there was any validity to
11 any of the statements made in those anonymous letters?

12 A. No.

13 Q. Yes, you believe there's no validity?

14 A. That's correct.

15 Q. Have you discussed whether there's any validity
16 with any of your senior staffers?

17 A. No.

18 Q. You've not had that discussion with your
19 inspectors or captains?

20 A. There may have been talk at staff meetings. In
21 particular one of those letters, one of the former --
22 Inspector Wright was mentioned in one of those
23 letters. May have spoken to him about it. But as far
24 as recall as far as meeting for that particular



WILCOX & FETZER LTD.
Registered Professional Reporters

1 subject, no.

2 Q. But you believe there's no validity at all to
3 any of the allegations made in those letters?

4 A. No. Not that I'm aware of. You know, also
5 included which was mentioned earlier about being the
6 godfather for officer's son, so on and so forth. So
7 that's what I mean by no validity to it.

8 Q. So did you speak with any of the black senior
9 officers other than Inspector Wright about the
10 allegations in the letters?

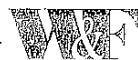
11 A. No. Other than at the -- in the open forum
12 such as a staff meeting, but no direct conversation.

13 Q. Do you believe anyone in the Wilmington Police
14 Department has any concern about any of the issues
15 raised currently?

16 A. Well, an organization -- the answer to that
17 would be, yes, an organization of that size you would
18 always have some concerns.

19 Q. But has there been any attempt on your part to
20 find out who may have the concerns and what the
21 concerns may be?

22 A. Again, I submitted a memorandum to all
23 employees. I have addressed roll calls and, you know,
24 advised the employees of proper channels to take such



WILCOX & FETZER LTD.
Registered Professional Reporters

1 complaints.

2 Q. I'm sorry. You've addressed roll calls?

3 A. Yes.

4 Q. What did you advise the officers during roll
5 call?

6 A. Advised them, again, essentially the same thing
7 I put in writing, that there are proper avenues to
8 pursue complaints of such a nature, that it's
9 detrimental to the police department by putting such
10 letters out in that fashion. However, I, you know,
11 emphasized that I may not be speaking to the correct
12 group, that I don't even know for a fact that that was
13 written, those letters were written by a police
14 officer, whether they were written by a spouse or
15 significant other or someone not affiliated with the
16 police department.

17 Q. What are those proper avenues, Chief?

18 A. Office of Professional Standards, City Office
19 of Personnel, the Department of Labor.

20 Q. Now, if any officer made any complaints through
21 any of those resources, would you be advised?

22 A. Yes.

23 Q. And have you been advised of any complaints
24 issued by any of your officers?



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. Not of the nature what was contained in those
2 letters.

3 Q. Would it surprise you, Chief Szczerba, if one
4 of your most senior officers is very concerned about
5 the allegations and believes that many of the
6 allegations may still be valid today?

7 A. No.

8 Q. It would not surprise you?

9 A. No.

10 Q. Why, then, if it would not surprise you, why
11 would you not take any action or have any discussion
12 about that issue?

13 A. I'm not aware of the person that you're
14 referring to and his or her concern or concerns.

15 Q. Did you make any effort after the letters were
16 issued to determine whether there was validity to any
17 of these concerns expressed in the letters?

18 A. Of my own knowledge, I could see -- again,
19 using his example of me being the godfather, that was
20 incorrect. I cannot even recall some of the
21 allegations in those letters.

22 Q. Well, allegations such as disparate treatment
23 between blacks and whites in the department.

24 A. No.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. What does your no mean?

2 A. No meaning that does not exist.

3 Q. It does not exist?

4 A. Correct.

5 Q. And what I was seeking from you as the top
6 administrator of the Wilmington Police Department was
7 to determine whether you have made any effort to look
8 to see if there are any of these areas of concern?

9 A. No.

10 Q. Who made the recent promotional decisions on
11 Custis and Akil?

12 A. I did.

13 Q. Did you have any input from anybody from the
14 City of Wilmington?

15 A. No.

16 Q. These were directly your decisions?

17 A. That's correct.

18 There was also a recent sergeant's
19 promotion also. They weren't the only two.

20 Q. What do you mean by that? What was the recent
21 sergeant's promotion?

22 A. There were -- well, two recent sergeant
23 promotions, Donald Bluestein and Amy Rausch. Also my
24 decisions.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. Were you aware that Faheem Akil had filed with
2 the Delaware Department of Labor as well?

3 A. Yes.

4 Q. And were you aware that his charge was racial
5 discrimination on the basis of failure to promote?

6 A. I believe that may have been part of it, but I
7 believe it was religious discrimination. I'm not
8 aware of being racial discrimination. That's a
9 possibility.

10 Q. It was your understanding it was religious
11 discrimination and you're not aware of racial
12 discrimination?

13 A. That's correct. I know that may be a
14 possibility, but I'm aware of religious
15 discrimination, the claim of.

16 MR. MARTIN: Thank you, sir. That's all I
17 have.

18 MS. TASSONE: Chief, just a few questions.

19 EXAMINATION

20 BY MS. TASSONE:

21 Q. Going back to when you took over as chief, did
22 you make the selection or recommendation to the rank
23 of captain?

24 A. Yes.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. And did you recommend for the rank of captain
2 an African American male?

3 A. Yes.

4 Q. Who was that?

5 A. Bobby Cummings.

6 Q. And did you make a recommendation as to the
7 individual to take the rank of inspector?

8 A. That's correct.

9 Q. And who was that?

10 A. James Wright.

11 Q. And what race was he?

12 A. Black male, African American.

13 Q. And going back to your recommendations or
14 promotions to the rank of captain, who else did you
15 recommend or promote, I should say, to captain?

16 A. Initially we already mentioned Bobby Cummings,
17 Sean Finerty, and Victor Ayala.

18 Q. What race is Sean Finerty?

19 A. White male.

20 Q. And Victor Ayala?

21 A. Hispanic male.

22 Q. You recently indicated that you recommended
23 Captain Nancy Deitz to the rank of inspector back in I
24 guess it was October.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. That's correct.

2 Q. Did you recommend her because she's white?

3 A. No, I did not.

4 Q. With regard to promotions within the band, are
5 all your promotions based on seniority within the
6 band?

7 A. No.

8 Q. Were you the first chief to officially add
9 seniority points to the promotional system in general?

10 A. That's correct.

11 Q. Have you ever made a decision based on an
12 individual's race or gender?

13 A. No.

14 Q. Going back to, I guess, it's Szczerba 1 --

15 A. This is Szczerba 1.

16 Q. Why did you promote Dennis O'Connor?

17 A. Dennis had supervisory qualities which were
18 noteworthy. First thing comes to mind is he has spent
19 some time in the development and bringing back of our
20 K9 unit which did not exist for quite some time. He
21 then assumed a role of an acting supervisor at the
22 rank of corporal and held that position for quite some
23 time. Not in particular for Dennis, but to have that
24 position elevated to a sergeant's position. I tried



WILCOX & FETZER LTD.
Registered Professional Reporters

1 unsuccessfully a couple of times in the budget
2 process, but in essence he was holding a position that
3 would have supervisory responsibilities and someone
4 has to have supervisory qualities to lead in that
5 position.

6 Q. Why did you promote Joseph Sammons?

7 A. Joe has always shown great initiative,
8 dedicated officer. He's always been self-motivated to
9 proceed in his professional qualifications. He's a
10 fingerprint expert. A lack of any significant
11 disciplinary matters. He had been a leader within the
12 unit itself in the evidence detection unit. So he
13 showed leadership qualities without the formal title.

14 Q. And Liam Sullivan, why did you promote Liam
15 Sullivan?

16 A. Liam Sullivan, again, highly motivated, a good
17 investigator, recognized by his peers and supervisors
18 as a quality officer, has brought distinction and
19 honor to the Wilmington department being one of the
20 top 50 officers in the entire country. His -- I
21 guess, gone to the extreme limits of being
22 self-motivated and holding positions of -- that
23 really, not under close supervision, but working with
24 the FBI and the task force position, brought to



WILCOX & FETZER LTD.
Registered Professional Reporters

1 justice numerous wanted felons while as part of the
2 unit, and continues to conduct himself in such a
3 manner.

4 Q. Now, you did explain why you selected Mike
5 Rodriguez. Let me ask you specifically. What is your
6 understanding of Sergeant Rodriguez's relationship
7 with outside agencies?

8 A. He also held a task force position, I believe,
9 with the Drug Enforcement Administration, good working
10 relationship with the Attorney General's office, the
11 City Solicitor's office, federal prosecutors.

12 Q. Would it be accurate to say that these
13 individuals stood out among the group?

14 A. Yes. Not collectively, but when it came time
15 for the selections, in comparison with the rest of the
16 band, there's has to be a breaking point somewhere,
17 and they are all highly qualified individuals and it
18 was a difficult or challenging decision to make.

19 Q. This is based on what you know and in your
20 opinion, correct?

21 A. That's correct. It's the authority and
22 responsibility that the chief of police for the City
23 of Wilmington has.

24 Q. And what race is Mike Rodriguez?



WILCOX & FETZER LTD.
Registered Professional Reporters

1 A. Hispanic.

2 Q. This issue with you being the godfather of Mike
3 Rodriguez's son, I think you've already said that that
4 was not true, correct?

5 A. That's correct.

6 Q. Any idea where this could come from?

7 MR. MARTIN: Objection. But go ahead and
8 answer it.

9 A. Okay. The possibility may be where there's a
10 confusion, at one point with -- prior to Mike
11 Rodriguez's wedding, I was working with him. At the
12 time he came into a bind where -- I don't know what
13 the age of the child was, seven- or eight-year-old who
14 backed out from walking with the flower girl in his
15 wedding. It was several days before the wedding. I
16 offered the services of a friend of mine who had a son
17 the same age at that point and offered his services to
18 walk with this flower girl in a wedding. Mike took me
19 up on the offer, and I got him through the tuxedo at
20 the last minute and we had him in the wedding. And
21 that's maybe where the confusion lies as to whether I
22 was a godfather or not.

23 Q. With regard to disciplinary records, do you
24 review the disciplinary records of the individuals who



WILCOX & FETZER LTD.
Registered Professional Reporters

1 you're looking at promoting?

2 A. No. If I had a question as to some recent
3 occurrence, I would get into that file and review it,
4 but you know, I sit in review of all of our complaint
5 hearing boards. If anything goes to an appeal board,
6 I'm the chair of that appeal board. So I'm aware of
7 all the disciplinary procedures.

8 Q. So was disciplinary -- did you review the
9 disciplinary records of Emory, O'Connor, Rodriguez
10 Sammons, Sullivan, Boyd, or any of the other ones?

11 A. No. My decision process did -- that did not
12 come into play.

13 Q. Prior to the filing of this complaint, did you
14 know, when you looked at the bands, the seniority of
15 the individuals in the band?

16 A. No. I have maybe had an idea but didn't look
17 at the seniority list, or that's what I would have to
18 refer to even to this date to look at this list if
19 someone had a question about who's senior to who
20 because it's a very difficult thing to do. As time
21 passes in 27 years, in addition to -- sometimes
22 you're -- it's a matter of splitting hairs because you
23 have individuals within the same band out of the same
24 academy class. However, they do have a pecking order



WILCOX & FETZER LTD.
Registered Professional Reporters

1 for seniority basis and how they finished in the
2 academy class.

3 Q. So when you talk about seniority, it's
4 according to the seniority list generated by the
5 Wilmington Police Department?

6 A. That's correct. If you are going by that, for
7 example, the class of '82 or '84, you'll have a
8 seniority listing within that particular academy
9 class.

10 Q. So do you know now, looking at Band II, in
11 Szczerba 1, after Kenny Boyd, do you know who the next
12 senior individual is? Do you know that offhand?

13 A. No, I do not.

14 Q. I'm going to show you the seniority list. This
15 is actually the Bates stamp number 2623.

16 MS. TASSONE: I have an extra copy for
17 you.

18 MR. MARTIN: Thank you.

19 BY MS. TASSONE:

20 Q. This was actually provided by the defendant in
21 discovery. You want to take a look at that and tell
22 me, if you can, who is next in terms of seniority
23 after Ken Boyd?

24 A. Richard Sutton.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. I'm sorry. Let me clarify. After meaning with
2 regard to the individuals left in Band I. That was my
3 fault.

4 A. Okay.

5 Q. After Ken Boyd you have Robert Curry, Chuck
6 Emory, Anthony Harris, Ralph Hauck, Stephen Misetich.
7 Of those individuals, who's next after Ken Boyd in
8 terms of seniority?

9 A. The first one I came to -- it may be a mistake.
10 I have to backtrack. I have Ralph Hauck.

11 Q. Who's before Ralph?

12 A. Right before Ralph is Robert Curry. But again,
13 they are out of the same class.

14 Q. On the seniority list, it would be Bob Curry
15 and Ralph Hauck, correct?

16 A. That's correct.

17 Q. And then Mike Rodriguez?

18 A. Yes.

19 Q. So in terms of the seniority list, you chose
20 Mike Rodriguez over, regarding seniority, Robert Curry
21 and Ralph Hauck, correct?

22 A. That's correct.

23 Q. And Robert Curry and Ralph Hauck are what race?

24 A. Both white males.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. And Mike Rodriguez is?

2 A. Hispanic.

3 Q. Regarding this, Mr. Martin asked you a question
4 about a comment that was alleged to have been made by
5 you during a staff meeting and that comment was that
6 you were making your promotions within the bands based
7 on seniority. Did you ever make that comment?

8 A. No.

9 Q. Did you ever discuss your promotional
10 selections during a staff meeting?

11 A. No.

12 Q. Did you discuss promotional selections,
13 obviously, before the announcement was made, did you
14 ever discuss your decisions with anyone else in the
15 police department?

16 A. No.

17 Q. Did you discuss at staff meetings your decision
18 to promote William Brown to lieutenant?

19 A. No.

20 Q. Did you promote William Brown to lieutenant
21 because his mother had passed away and he was
22 attending the funeral, would not be able to take the
23 test?

24 A. No.



WILCOX & FETZER LTD.
Registered Professional Reporters

1 Q. Why did you promote William Brown?

2 A. I thought at the time, with the candidates that
3 were available, that he had best -- exhibited the best
4 supervisory quality.

5 Q. In you read the complain, correct? You
6 reviewed the complaint in this case?

7 A. Yes.

8 Q. And there's an allegation that you promoted
9 your friends. Do you recall that?

10 A. Yes.

11 Q. Is that true?

12 A. No.

13 Q. Why is that?

14 A. With 27 years of service, in serving with
15 hundreds of officers in that time, I believe that the
16 current officers on the department I consider having
17 one friend who's an academy mate of mine. Other than
18 that, there's no friendship relationship, no social
19 relations.

20 Q. Of all the individuals that you promoted -- and
21 just to help you out, let me give you this document.

22 MS. TASSONE: I have one for you, too,
23 Jeff. It's Bates stamp 2621.

24 Q. Take a look at that and tell me, of all the



WILCOX & FETZER LTD.
Registered Professional Reporters

1 individuals that you've promoted, did you have any
2 type of social relationship outside of the police
3 department?

4 A. No. Starting -- I can go down the list, but
5 I -- no. With anyone on that -- that I promoted --
6 some of the people I didn't promote prior to me coming
7 to their current rank.

8 Q. You can correct me if I'm wrong, but your
9 promotions started with the ones promoted in 2000?

10 A. That's correct because, although the promotions
11 were announced in early 2001, they were retroed back
12 to the year 2000, at least as far back as, according
13 to this list, June of 2000.

14 Q. With any of those individuals, did you have
15 some type of social relationship outside of the
16 department?

17 A. No.

18 Q. Did you ever hunt with any of those
19 individuals?

20 A. No.

21 Q. So you're not hunting partners with any of
22 those people?

23 A. No.

24 Q. Looking at Szczerba 2, you had made a comment



WILCOX & FETZER LTD.
Registered Professional Reporters

1 that this was incorrect, that the notes that Detective
2 Boyd made on this on Szczerba 2, that they were
3 incorrect, is that --

4 A. Yes.

5 Q. And why are they incorrect?

6 A. Incorrect showing Mayna Santiago as my first
7 sergeant selection -- or no. Showing Mayna Santiago
8 as -- I take it to be a Boykin selection, former Chief
9 Boykin in November of 2000. However, Mayna was
10 promoted by me after I came in office behind Thomas
11 Dempsey, Stephen Barnes, and then Mayna Santiago. So
12 Mayna Santiago was a -- should be correctly written as
13 a Szczerba promotion, not Boykin.

14 Q. And was Mayna more senior or less senior than
15 Tom Dempsey?

16 A. More senior.

17 Q. And more senior, less senior than Steve Barnes?
18 And you can take a look at your seniority list.

19 A. That I'm not sure of.

20 Please bear with me. Find them on this
21 list.

22 Senior to Steve Barnes.

23 Q. Understanding that you've said several times
24 that, when you looked at the promotion when you



WILCOX & FETZER LTD.
Registered Professional Reporters

1 promoted Mike Rodriguez, that you weren't basing it on
2 Rodriguez versus Boyd, that you were looking at all
3 the individuals that were left in Band II at that
4 time, understanding that that's what you're saying,
5 but as between Ken Boyd and Mike Rodriguez, who did
6 you feel had the better supervisory qualities that you
7 were looking for?

8 A. It's -- my decision is Mike Rodriguez.

9 Q. Did race have anything to do with that
10 decision?

11 A. No.

12 MS. TASSONE: I have nothing further.

13 MR. MARTIN: No further questions. Thank
14 you, Chief.

15 (Deposition ended at approximately
16 3:55 p.m.)
17
18
19
20
21
22
23
24



WILCOX & FETZER LTD.
Registered Professional Reporters

1 INDEX TO TESTIMONY

2

3 <u>MICHAEL J. SZCZERBA</u>	<u>PAGE</u>
4 Examination by Mr. Martin	2
5 Examination by Ms. Tassone	36

6

7 -----

8 INDEX TO EXHIBITS

9 SZCZERBA DEPOSITION EXHIBIT NO. PAGE

10 1 Final Promotion Scores, April 15, 2002	14
11 2 Final Promotion Scores, 12 November 29, 2000	29

13

14

15

16

17

18

19

20

21

22

23

24



WILCOX & FETZER LTD.
Registered Professional Reporters

REPLACE THIS PAGE
WITH THE ERRATA SHEET
AFTER IT HAS BEEN
COMPLETED AND SIGNED
BY THE DEPONENT.



WILCOX & FETZER LTD.
Registered Professional Reporters


State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Ann M. Calligan, Registered Merit Reporter and Notary Public, do hereby certify that there came before me on the 23rd day of January, 2006, the deponent herein, MICHAEL J. SZCZERBA, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed by use of computer-aided transcription and computer printer under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.



Ann M. Calligan, RMR
(Certification No. 186-RPR)
(Expires January 31, 2008)

DATED: January 25, 2006



WILCOX & FETZER LTD.
Registered Professional Reporters

A1525

CERTIFICATE OF SERVICE

I, Thomas S. Neuberger, being a member of the bar of this Court do hereby certify that on July 27, 2007, I sent this **Sealed Appendix** to the following by the means indicated:

Teresa A. Cheek, Esquire
Young, Conaway, Stargatt, & Taylor, LLP
The Brandywine Building, 17th Floor
1000 West Street, P.O. Box 391
Wilmington, Delaware 19899-0391
tcheek@ycst.com
(by Hand Delivery)

Rebecca Butcher, Esq.
Dan Rath, Esq.
Landis, Rath & Cobb, LLP
919 Market Street, Suite 600
Wilmington, DE 19801
butcher@lrclaw.com
(by Hand Delivery)

/s/ Thomas S. Neuberger
THOMAS S. NEUBERGER, ESQ.